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Supreme Court of the United States

October Term, 1952

No. 3

JOHN KEDROFF and BENJAMIN FEDCHENKOFF, as Archbishop, etc.,

Appellants,

v.

SAINT NICHOLAS CATHEDRAL OF THE RUSSIAN ORTHODOX CHURCH IN NORTH AMERICA,

Appellee.

APPEAL FROM THE COURT OF APPEALS OF THE STATE OF NEW YORK.

SUPPLEMENTAL BRIEF FOR APPELLEE ON REARGUMENT.

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[Emphasis in quoted matter, unless otherwise indicated, has been supplied. The abbreviations M. Br. and Ap. Br. refer to appellee's main brief, submitted on the earlier argument, and to appellants' brief on this reargument, respectively.]

Scope of Brief.

This brief is intended to supplement, and not to supersede, the brief for appellee submitted on the earlier argument. It will be limited to a discussion of the jurisdictional question which counsel were requested to include in their presentation on reargument (343 U. S. 972).

Statement.

A statement of facts, with references to the record, historical treatises and other sources and a chronological table, will be found in appellee's main brief (pp. 6-46; 111). Judge Conway's opinion in the Court of Appeals and Mr. Justice Van Voorhis' dissenting opinion in the Appellate Division also contain factual accounts which illuminate the background of the statute.

Parties and Pleadings.

In 1945, appellee, a New York religious corporation, having legal title to premises at 13-15 East 97th Street, New York City (the Cathedral), brought this action in ejectment against appellant John Kedroff as sole defendant. He was the younger son of John Kedrovsky, who had obtained possession of the Cathedral in 1926 by hoodwinking the New York courts as to his canonical status, as is now conceded by appellants. The Kedrovsky (Kedroff) family occupied the premises for nineteen years. Appellant Kedroff, when sued, made some kind of deal under which he admitted appellant Fedchenkoff (Metropolitan Benjamin) to the premises. Two years later, in 1947, Benjamin intervened as a party defendant and pleaded a right of possession based on his appointment thirteen years earlier, in 1934, as archbishop of the alleged "Archdiocese of North America and the Aleutian Islands" of the Russian Orthodox Church.

Statute Involved.

The material portions of the statute upon which the judgment appealed from is based are given in Appendix A (*infra*, p. 47).

Russian Orthodox Church.

Appellants make much of the indivisible character of the Russian Orthodox Church. The fact is, however, that, except for the ancient patriarchates and some minor sees, all of the existing autocephalous Orthodox Churches came into existence as the result of political conditions. The Russian Orthodox Church itself was formed by breaking away from the Ecumenical Patriarch after the capture of Constantinople by the Turks in 1483. Not until about 135 years later was its *de facto* autocephaly made *de jure*. "The autonomous Russian Church in America", said Mr. Justice Van Voorhis, "is following a similar course today" (Jurisd. Statement, p. 123).

After the March revolution in 1917 a sobor (convention) of the Russian Orthodox Church adopted a new, canonical and rather democratic constitution, under which the patriarch was made the chief administrative officer and the lower clergy and laity were permitted to participate in diocesan government. Diocesan sobors were provided for.

Old Diocese.

The Russian Orthodox Church existed on the North American continent first as a mission (1793-1870), then as a missionary diocese (1870-1904), then as a full-fledged diocese (1904-1924). The mission or diocese, as existing up to April 2-4, 1924, will be referred to as the *Old Diocese*.

Schism of the Renovated: Suppression of Patriarchate.

After five years of frontal attack on the Church, with the execution or imprisonment of clergy, confiscation of treasures and closing of buildings, the Bolsheviks invented

a new weapon, schism. Having arrested and imprisoned Patriarch Tikhon, the government abetted the creation of the non-canonical Renovated (Living) Church, which was permitted to hold a sobor in 1923 and to establish a central administration under a "Holy Synod". At their pseudo-sobor the Renovated officially declared "capitalism to be a mortal sin, and a battle with capitalism to be holy to Christians". During the years 1922-1927, when the government favored the schismatics, the central office of the Patriarchate was suppressed.

Patriarchal Ukase No. 362.

On November 20, 1920, while civil war was raging in the south of Russia, the supreme church administration under Tikhon issued an ukase (decree) which provided, among other things, that in case the activity of the supreme church administration should stop and it was impossible for a diocesan bishop to establish contact with the bishops of the neighboring dioceses, he should himself assume full power and organize the diocesan administration with the assistance of the existing offices (convention, council, etc.) or newly organized ones; in case the situation should acquire a protracted or permanent character, the diocese should be divided into small dioceses and form itself into a district; all measures taken locally in accordance with the present instructions and all measures taken thereafter must be submitted for confirmation later to the central church authority when re-established.

Consistory Case.

In 1918 an American priest named John Kedrovsky brought in the New York Supreme Court a representative action against a corporation known as the Archbishop and

Consistory and others, in which he obtained the appointment of a receiver. The titles to about 135 Russian Orthodox parish properties in America (not including the Cathedral) were involved in the suit (which will be referred to as the Consistory Case).

Appointment and Purported Dismissal of Platon.

Metropolitan Platon (Rojdesvensky) of Herson and Odessa was elected ruler of the *Old Diocese* at a diocesan sobor held in Pittsburgh in 1922, and Patriarch Tikhon was asked to confirm the election, which he did orally in 1922, and by a decree dated September 29, 1923 (R. 180). Four months after the date of the decree, when Tikhon had been released from prison but was confined in a monastery, seriously sick, with four doctors furnished by the government in attendance upon him, and suffering heart attacks, Tikhon and the Holy Synod (patriarchal) issued a decree, No. 28, deciding that, as they had proof that Platon had "engaged in *public acts of Counter-Revolution directed against the Soviet power* and of disastrous consequences to the Orthodox Church", he would be dismissed from the government of the *Old Diocese* from the day on which the decision was announced to him by his successor, whereupon he would be invited to come to Moscow to put himself at the disposal of the Patriarch. In Bolshevik terminology any criticism of the Soviet regime was an "act of counter-revolution."

The official announcement to Platon was not made until nine years later but the text of the decree was published in the newspapers shortly after its date, January 16, 1924.

St. Nicholas Parish and Corporation: Erection of Cathedral.

St. Nicholas parish in New York City started in 1893 as a "brotherhood and a small group." They collected money here and abroad. The Church in Russia and the

Russian government contributed substantial sums. A parish corporation (which will be referred to as St. Nicholas' Corporation) was formed in 1899 under the New York law, which at that date limited the incorporators and trustees of an Orthodox religious corporation to the diplomatic and consular representatives of the Russian government.

St. Nicholas' Corporation acquired the premises here in suit. "They started [building] in 1903, and *the church was consecrated in 1905, and was a parish church at that time*" (R. 8). Later in the same year the diocesan see was moved from San Francisco to New York and the premises became a cathedral, although no change was made in the name of the corporation. The successive ruling bishops of the *Old Diocese* occupied the Cathedral from 1905 on.

Purported Dismissal of Platon and Appointment of Kedrovsky by Renovated Synod: Cathedral Case.

In 1923 the "Holy Synod" (Renovated) purported to excommunicate Platon and appoint as ruler of the *Old Diocese* John Kedrovsky, a married man living with his wife, and to consecrate him a bishop, although traditionally Orthodox bishops are monks, who have never married or are widowers. He returned to America, armed with impressive credentials, and attempted to take over control of the *Old Diocese* and all of its properties, including the Cathedral. Litigation ensued in various states.

On March 29, 1924, Kedrovsky sued Platon and his dean in the New York Supreme Court to restrain them from occupying the Cathedral. This suit will be referred to as the Cathedral Case.

Detroit Sobor of 1924.

A sobor of the *Old Diocese* was held at Detroit on April 2-4, 1924. Various speakers referred to the recently published decree of the Patriarch, dismissing Platon, the

appointment of Kedrovsky by the Renovated Church as administrator of the diocese, the law suits with Kedrovsky, the receivership in the Consistory Case, the danger of losing the church properties, the violence being used on the ailing Patriarch. "We must create our own firm Church Administration," said one of the speakers, "completely insured against the possibility of the direct or indirect influence of the Soviet power." The terms of the patriarchal ukase, No. 362, of November 20, 1920, were distinctly referred to by a speaker who went on to point out that actualiy the *Old Diocese* for "a good many years now" had been cut off from the Patriarch.

The ensuing debate "showed the unanimous desire of the members of the Sobor to keep our American Church from Soviet interference".

The sobor, by unanimous vote or with slight opposition or abstentions, declared the temporary autonomy of the *Old Diocese*, designated Platon as ruler, resolved not to break spiritual communion with the Russian Mother Church, provided for a new constitution and left the final regulation of the relationship between the two Churches to a future sobor of the Russian Orthodox Church which would sit with the participation of representatives of the American Church *under conditions of political freedom.*

Thus was created, on the canonical basis of ukase No. 362, the administratively autonomous metropolitan district known as the Russian Orthodox Greek Catholic Church of North America, which will be referred to as the *Russian Church in America.* Its central see was the Cathedral which Platon continued to occupy.

Trial of Cathedral Case and Decision at Special Term.

The trial opened at Special Term on October 27, 1924. Platon's counsel concentrated on attacking the canonicity

of the Renovated Church and, especially, its position on married bishops. He made no attempt to base Platon's right to occupancy of the Cathedral on the resolution of the Detroit sobor of 1924. In fact these resolutions were excluded when first offered and later admitted only as bearing on "the sentiment of the diocese." Appellants' intimations (Ap. Br., pp. 6, 16) that the case represented a contest between a Moscow *appointed* prelate and a locally *elected* one are disingenuous.

Special Term (Ford, J.) ruled in favor of Platon (72 N. Y. L. J. 1211, Dec. 31, 1924), saying:

> "There is a graver consideration in the attempt of this new church, a product of the Russian dictatorship, to obtain control of a country-wide religious organization in America with hundreds of clergymen and branches scattered all over nearly all the states and having upwards of a quarter of a million members. **The property used by the Russian Church totals in value an immense sum. If the Soviet authorities can gain control of all these, what a base for their revolutionary propaganda they will have secured.**"

Incorporation of Appellee and Transfer of Title to It by St. Nicholas' Corporation.

Appellee was incorporated by special act (L. 1925, c. 463, effective April 8, 1925), which specified its object and purpose to be the acquisition, maintenance and management of a cathedral church and its appurtenances in New York City as a central place of worship of the "Russian Orthodox Church in North America", the residence of its ruling archbishop and connected religious, charitable and educational work. No mention was made in the act of the Mother Church, the Patriarchate, the *Old Diocese* or the 1917-1918 enactments.

Pursuant to authority expressly conferred by the special act, St. Nicholas' Corporation conveyed and transferred all of its real and personal estate to appellee on April 17, 1925. At the first meeting of appellee's trustees Platon expressed satisfaction that by the incorporation the Cathedral "will forever be preserved safe as a central place of worship of the whole Russian Orthodox Church in North America and seat of the Church Administration in this country".

After the transfer of title the Cathedral continued to be used as the central place of worship and administration of the *Russian Church in America* and the see and residence of its metropolitan.

Cathedral Case on Appeal.

As in the trial court, so on appeal, Platon's counsel made no attempt to base his rights on his election at Detroit or on the canonicity of the autonomous district. In fact, ukase No. 362 was not in the record. On November 27, 1925, the Appellate Division rendered an opinion, one justice dissenting, reversing the decision at Special Term (214 App. Div. 483). The majority were impressed by Kedrovsky's credentials, which are now admitted by appellants to have been false, and by the deposition of an American Methodist minister who spoke, wrote and understood no Russian but swore that the pseudo-sobor of 1923 was canonically convened. The court found, "contrary to what is now conceded to be the fact" (R. 262), that the 1923 sobor was valid and that Kedrovsky was ruler of the diocese. The Court of Appeals affirmed without opinion (242 N. Y. 547), treating the case as one involving only questions of fact on which there was evidence to sustain the findings of the Appellate Division (R. 262).

Shortly after the coming down of the decision of the Court of Appeals on March 30, 1926, Platon and his dean

left the cathedral and Kedrovsky moved in. *This was when the canonical archbishop was wrongfully ousted.*

Reopening of Patriarchal Central Office: "Loyalty" to Soviet Regime.

In 1927 the Soviet government, which had arrested the three bishops whom Tikhon before his death in 1925 had named as his successors, permitted Metropolitan Sergius, with the title of acting or substitute *locum tenens* of the patriarchal throne, to reopen the central office of the Patriarchal Church. He was required, however, to declare his "loyalty" to the regime, which he did in a public statement. He also required "loyalty" to the Soviet government from all of the Russian Orthodox clergy outside of Russia. By "loyalty" was meant refraining from criticism of the Soviet regime either in the pulpit or in the name of the Church.

Congregational Policy Imposed on Russian Church by Government.

In 1929 the government of the Soviet Republic of Russia issued an ordinance to the effect that resolutions and orders of religious conventions, conferences and their executive bodies could be carried out "only by way of voluntary execution by the faithful". This meant that no superior ecclesiastical organ was permitted to impose its commands on a local congregation.

Action of Court of Appeals in Consistory Case.

The case reached the Court of Appeals in 1928. The judgment of Special Term, unanimously affirmed by the Appellate Division, had directed that the deeds to 135 parish properties be delivered to Kedrovsky. A board of diocesan trustees, headed by Platon, was granted leave to

appeal by the Court of Appeals. As stated by Judge Conway (R. 263):

> "* * * Realizing that the legitimate claims of the North American Diocese [*Russian Church in America*], whose temporary autonomy had but recently been declared, were entitled to consideration under the circumstances disclosed, we unanimously reversed the judgments below (*Kedrovsky* v. *Russian Catholic Church*, 249 N. Y. 75)."

Arrival of Benjamin in America and Demand of Pledge of "Loyalty": Interdict Against Platon.

By ukase No. 29 of March 22, 1933, Sergius and his synod appointed Benjamin exarch to investigate the affairs of "the Russian North American Diocese" and commissioned him to take over the government of "the said Diocese upon the dismissal of Metropolitan Platon therefrom." When Benjamin arrived in America he demanded, in the name of the Patriarchate, a pledge of "loyalty" to the Soviet government from the American clergy, who refused to give it.

In June, 1933, Platon cabled Sergius asking him to bless the consecration of an American bishop. Sergius replied, demanding that Platon publish in the newspapers that he recognized Sergius as the head of the Church and was not active in "politics", that is, publicly opposing the Soviet regime. Platon refused to publish such a statement. Later he issued a declaration in which he proclaimed the *Russian Church in America* autonomous, openly opposed the Soviet regime and accused the Church in Russia of becoming a slave of the godless government and aiding it in its fight against God.

The policy of the central church authorities in Moscow to require an obligation of "loyalty" to the Soviet regime from the clergy abroad has continued to the present time.

After the American clergy had refused to give to Benjamin a pledge of "loyalty" to the Soviet government, Sergius and his synod issued an ukase, No. 61 of August 16, 1933, declaring the proclamation of the "North American Diocese" as autonomous to be null, declared schismatic "the religious group organized around Metropolitan Platon" and all of their acts invalid, decreed that Platon "as the initiator and chief author of the schism" be summoned before the Court of Bishops and charged with violation of the ancient canons, placed him under an interdict "until either he repents or the ecclesiastical court shall have rendered a decision" and proposed to the American clergy and laity that they, "breaking off from communion with those who entered into schism" should express "their submission to this present decision and their determination and promise in future to remain in the canonical jurisdiction of the Moscow Patriarchate".

This unilateral and *ex parte* action, which broke off spiritual relationship between the Mother and Daughter Churches, was taken with no advance notice, without the preferment of charges and without permitting an opportunity to Platon or the *Russian Church in America* to be heard.

By decree No. 1005 of June 29, 1934 Sergius and his synod appointed Benjamin "permanent Ruling Bishop of the Russian North American Diocese with the title of Archbishop of the Aleutian Islands and North America, also reserving to him the status of Exarch of the Moscow Patriarchate in America". This ukase recited that the acting patriarchal *locum tenens* and his synod had heard the facts concerning the refusal of Metropolitan Platon to render canonical submission to the patriarchate, and the declaration of Platon proclaiming the diocese "autocephalous",

and referred to the patriarchal ukase of January 16, 1924, dismissing Platon from the government of the North American diocese because of his "acts of counter-revolution directed against the Soviet power" and summoning Platon to Moscow (*supra*, p. 5). The ukase also referred to the decisions of March 22, 1933, and August 16, 1933, above mentioned. The ukase also referred to the verbal proposal of the acting *locum tenens* the opening words of which were stated as follows: "His Eminence, the Exarch in America, reports that he has organized in New York a Diocesan Council and that **our North American Diocese has begun official existence.**" As Judge Conway said (R. 265), this "would seem to be a significant admission that the former North American Diocese, which had by that time become a metropolitan district, had achieved practical administrative autonomy and that it was necessary for the Russian church to organize a new diocese" (which will be referred to as the *New Patriarchal Diocese*). After these recitals the ukase decreed the appointment of Benjamin as above mentioned and confirmed the establishment by the exarch of a diocesan council.

Despite these decrees of the Patriarchate and its attempt to set up its own diocesan organization in America, the American parishes remained loyal to Platon. Benjamin testified that 50 parishes recognized him as ruling bishop, but he failed to identify them although he promised to do so and there is ground to consider his claim exaggerated. *In any event there is no proof that a single one of his parishes was in existence at the time of the 1924 Sobor or at the time of his arrival in this country.* They may all have been founded since then.

Election of Theophilus; Interdict Against Him; Adoption of Parish and Church Statutes.

A sobor was held at Cleveland on November 20-23, 1934, reaffirmed the autonomy of the *Russian Church in America*, elected Theophilus (Pashkovsky), then Bishop of Chicago, to be metropolitan and ruling bishop in place of Platon, who had died, and adopted certain statutes for the administration of parishes known as the normal parish statutes.

On January 4, 1935 (R. 228) an interdict like that which had been placed upon Platon "for similar conduct" was issued against Theophilus by the Patriarchate.

At a sobor held at New York on October 5-8, 1937, the autonomy was again affirmed and statutes for the administration of the Church were adopted.

Yonkers Case.

In 1940 the status of the *Russian Church in America* again came before the Court of Appeals on a motion for leave to appeal from the decision in *Waipa* v. *Kushwara*, 1940, 2d Dept., 259 App. Div. 843. In a suit brought to compel a priest to comply with an order of Metropolitan Theophilus transferring him from a church in Yonkers, New York, to another parish, he defended on the ground, among others, that Benjamin as appointee of the patriarchate, and not Theophilus, had authority here. The lower courts rejected this contention, finding authority for the creation of the *Russian Church in America* in patriarchal ukase No. 362 of November 20, 1920, which was to continue "until such time as the existing civil authorities • • • would cease interfering with the church" (N. Y. L. J., Jan. 6, 1940, p. 97, col. 5). The Court of Appeals denied leave to appeal (283 N. Y. 780).

Failure of Negotiations with Patriarchate.

When Sergius, who had finally, in 1943, been permitted by the Soviet government to assume the office of Patriarch, died in 1944, the *Russian Church in America* sent a telegram of condolence to the patriarchal *locum tenens* which was courteously acknowledged on behalf of the Holy Synod. Then the *Russian Church* in America was invited to send delegates to an All Russian Sobor to be held in Moscow in January, 1945. The delegates chosen by Theophilus were a bishop, two priests and a layman. The Soviet government visaed their passports and offered the use of a military plane from Alaska to Moscow. Later the visa on the layman's passport was cancelled and the military plane that was carrying the bishop and one of the priests put them down in the middle of Siberia. They had to take a train and arrived ten days late for the Sobor, at which the present Patriarch, Alexy, had already been elected. They appeared before the Synod, rendered a full report in writing on the condition of the *Russian Church in America* and a written request for the lifting of the suspension on appropriate terms of autonomy. A few days later, without having opportunity for discussion, they were handed an ukase by the Patriarch.

The ukase prescribed certain conditions for the lifting of the suspension, among which was the formation of a new district covering all of the American hemisphere, the convocation of an American sobor "consisting of all the bishops, representatives of the clergy and laymen of the **present exarchate headed by Metropolitan Benjamin as well as of the Metropolitan District headed by Metropolitan Theophilus**". The sobor was to elect a metropolitan, subject to confirmation by the patriarchate; as candidates the patriarchate recommended Benjamin and also the arch-

bishop who was being sent from Russia to preside over the sobor. Although Benjamin had advised the Patriarch, just prior to his election that **an essential condition of reunion between the Mother Church and the *Russian Church in America* was the fullest loyalty to the Soviet power** but that he did not think that the *Russian Church in America* would accept that condition, the ukase also stipulated that the sobor in the name of the *Russian Church in America* "declares its abstention from political activity against the USSR and gives corresponding orders to all parishes".

The ukase also stated that the metropolitan-exarch of the American district, together with the council of local bishops, "may be given some extended powers by the Moscow Patriarchy, but the right to reward the clergy with higher titles, and the right of appeal as regards bishops, clergy and others, remain with the Moscow Patriarchy."

The ukase was rejected by the bishops' council of the *Russian Church in America* at a meeting held on May 22-24, 1945. The metropolitan council later issued an official statement explaining the rejection. In commenting on the demand for renunciation of political activities against the USSR, the statement said:

> "* * * the Russian Church in America exists in an atmosphere of religious and political freedom. Every citizen of the United States and of Canada has the right of freedom of speech. He may criticize his own government or any other government, so long as he does not go beyond certain limits which have been fixed by statute or decisions of the courts. It would be inconsistent with the duties and obligations of loyal American and Canadian citizens, and contrary to the traditional atmosphere of freedom of speech and political action in these countries, for

the [*Russian Church in America*] to give the pledge of loyalty to a foreign power which is implicit in the demand of the Patriarchal Ukase."

As to the holding of an election of a metropolitan the metropolitan council saw no justification, there being no present vacancy in the office.

The statement ended as follows:

"The [*Russian Church in America*] has sympathized with its mother church in all of her trials and tribulations. It has rejoiced in the privileges which have been recently accorded to her. But there must be further discussion and clarification of the relationship between the two churches. Why was the [*Russian Church in America*] invited to send representatives to the Sobor of January, 1945? Was it so that they might attend the Sobor? Then why was the visa of the lay representative cancelled and why were the two clerical representatives who made the trip not permitted to arrive in time for the Sobor? Why were those representatives not given an opportunity to discuss the conditions of the Ukase but merely handed the completed document for delivery to Metropolitan Theophilus? It was an arduous journey for them to make if their function was only that of couriers. The Ukase might more economically have been brought here by Exarch Benjamin, who went to Moscow and was present at the Sobor.

The substance of the Ukase, as well as its tone and all of the circumstances leading up to and surrounding the issuance of the Ukase, suggest the high-handed methods of an autocratic bureaucracy. The [*Russian Church in America*] is flourishing in the atmosphere of democratic freedom. It was no fault of the American branch of the Russian Orthodox Church that by force of circumstances it was compelled to establish its own church administration. It was no fault of the [*Russian Church in America*] that

the Patriarchate laid a suspension on it because its clergy declined to give a pledge of loyalty to the Soviet power.

It is an American Church and an American Church it must continue to be."

In September, 1945, an archbishop, Alexis, came to the United States as an ambassador from the Patriarch. Appellant Kedroff, who had already been sued in this action, requested and received reordination at the hands of Benjamin and the patriarchal envoy and admitted them to the Cathedral in about October, 1945.

At a sobor held at Cleveland in November, 1946, the *Russian Church in America* resolved that the Patriarch "be requested to continue us in his fold and be our Spiritual Head, conditioned upon the Church in America retaining its present autonomous status and the right of self government"; that the periodic All American Sobors should remain the supreme legislative and administrative body of the Church; at those sobors the Church should continue to elect its own metropolitan and make and adopt its own laws by which the Church is governed; that in the event that the aforesaid conditions were found not to be acceptable to the Patriarch, the Church should continue self-governing until such time as the Patriarch should find it possible to accept the conditions stated in this resolution.

In response to a cable giving him the substance of this resolution, the Patriarch cabled Theophilus that on principle he had no objections against autonomy for "our Orthodox Church in America" and was commissioning Metropolitan Gregory of Leningrad to discuss all questions with Theophilus. Gregory, however, did not succeed in his mission as he testified at the trial that the *Russian Church in America* was still under suspension.

Moscow Patriarchate an Instrument of Soviet Propaganda.

The Patriarchate has thrown itself with enthusiasm into the "Hate America" campaign of the Soviet government. For the last several years the official publications of the Patriarchate have been engaged in heated attacks on the United States and definitely mixing in lay politics. Annexed to appellee's main brief (Appendix C, pp. 118 *et seq.*) will be found translations of extracts from the official Journal of the Moscow Patriarchate. More recent material of this nature is given below (Appendix B, *infra*, p. [illegible]). This shows that Metropolitan Nicholas of Krutitsk and Kolomen, the second ranking dignitary in the Patriarchate, has been particularly active as a Soviet propagandist in speech and writing, *in the name of the Church*. The policy of "refraining from politics only * * * in the name of the Church" testified to by Benjamin, evidently applies only to adverse criticism of the Soviet regime, not to the official Soviet "line".

Summary of Argument.

No federal question is involved in the presumed *legislative* finding that the Patriarchate is "no longer capable of functioning as a true religious body." A *judicial* finding to this effect would raise no federal question. The adjudication of disputes over church property is a service rendered to the Church by the State, like police or fire protection of church properties: it does not breach the traditional wall of separation. The two-fold doctrine of *Watson* v. *Jones* is not imbedded in the federal constitution. Whether, to what extent and subject to what modifications and qualifications the doctrine—comprising the rules of denominational control and of the conclusiveness of decisions of

ecclesiastical tribunals—is to be applied to church property cases, is exclusively a state matter.

In order to be in a position to apply the doctrine of *Watson* v. *Jones* in the present case—in the absence of the statute—the trial court would have had to determine the status of the Patriarchate in Russia, again a state matter.

An explicit legislative finding as to the status of the Patriarchate would have raised no federal question. This would have been pertinent to a legislative determination as to the applicability of the *Watson* v. *Jones* doctrine in a general class of court cases likely to arise in the future. The New York courts had been plagued with lawsuits over Russian Orthodox church properties. The decisional law (Yonkers Case), while favorable to Theophilus as against Benjamin, was in an unsatisfactory condition. A formal legislative investigation and explicit finding would have been in order.

A legislative finding as to the status of the Patriarchate is implicit in the statute. The Court of Appeals properly resorted to presumption. The imprisonment of Tikhon and emergence of the Renovated Church forced the *Old Diocese* to set up an autonomous organization. The birth, life and death of the Renovated Church are striking evidence of the complete control of church activities by the Bolsheviks. The requirement of "loyalty" to the Soviet regime was proven by Benjamin's own testimony. The 1927 declaration of the Russian bishops has not been lived up to in practice. There is ample evidence in the record to support the presumption of a legislative finding as to the status of the Patriarchate in Russia. Also there is the general knowledge that no organization is free in the Soviet Union. And since the trial below the Patriarchate has brazenly assumed an active role in the Soviet propaganda apparatus. The presumption is not forbidden by the policy

expressed in *West Virginia School Board* v. *Barnette*. Since, as shown, an explicit finding would have involved no federal question, the presumed finding is a state matter exclusively.

No federal question is involved in the legislative mandate. The validity of the action of the 1924 sobor at Detroit is a state matter. In the absence of the statute the trial court would have properly inquired into that matter. The legislature found explicitly the creation of the autonomous metropolitan district, based presumably on the patriarchal ukase No. 362. The statute was declaratory of the decisional law as declared in the Yonkers case. In this respect both that case and the statute concerned a state matter.

Findings to the effect that the interdicts placed on Platon and Theophilus were invalid, insofar as affecting the control of property in New York dedicated to religious use, are implicit in the statute and are state matters. Such invalidity would follow from the validity of the autonomy and the incapacity of the Patriarchate. Also, there was no Court of Bishops in America and trips to Russia would have been suicidal.

The invalidity of the policy of requiring "loyalty" from the American flock is a state matter, as is the validity of the American Church's position in rejecting all terms of reunion short of complete autonomy.

The validity of the organizational structure of the American Church, described in the statute, is a state matter, as is also the explicit finding by the legislature that the *Russian Church in America* is identical with the *Old Diocese*.

The mandate that the properties included in the *Old Diocese* should be administered in accordance with the rules

of the *Russian Church in America* inevitably follows from the undergirding findings of fact, explicit or implicit, and is a state matter.

No federal question is involved in the award of possession to appellee. The questions of (1) Where is the beneficial title? (2) Who are the members of appellee? (3) For what purpose may the Cathedral be used? (4) Who are the proper denominational governing authorities?—are all state matters.

The award of possession to appellee does not violate the applicable "canon law". Of the two alleged rules relied on by appellants, viz.: (1) the ruling bishop of "the American Archdiocese" is appointed by the Patriarchate and (2) the ruler of "the American Archdiocese" has the prerogative of occupying the Cathedral—the first is irrelevant and the second begs the question which was passed on by the legislature to the contrary effect.

The judgment does not prohibit the free exercise of his religion by the "canonical archbishop". The "canon law" determined by the legislature, as a state matter, to be applicable is the body of administrative statutes adopted by the sobors of the *Russian Church in America*. Pursuant to those statutes the "canonical archbishop" is elected by the American sobor. The judgment enables him to serve in the Cathedral. No federal question is involved.

The statute, as applied in the case at bar, no more interferes in the internal affairs of a religious body than the judgment of any court which is called on to decide a dispute over a church property.

The statute does not outlaw the patriarchal jurisdiction from the state. The Patriarchate is free to found or take under its control any Russian Orthodox churches in New York provided that they did not form part of the *Old Diocese* or the *Russian Church in America*.

The canonicity of the American Church is not the concern of appellants.

The judgment may be sustained on state grounds. The opinions of the majority in the Court of Appeals were mainly devoted to describing the factual background as an aid to construction. The federal question was insubstantial. This Court is not bound by the certificate of the state court that the federal question was necessarily passed on.

ARGUMENT.

POINT I.

No federal question is involved in the presumed legislative finding that the Patriarchate in Russia is "no longer capable of functioning as a true religious body" (R. 284).

A. A judicial finding to similar effect would have raised no federal question.

Since the foundation of the Republic, state and federal courts have been adjudicating disputes over the control of property dedicated to religious uses. In Appendix C. (*infra*, p. 81) will be found citations of a number of such cases selected from state and federal jurisprudence.[1]

So far as known, this is the first time the suggestion has been made that for a court to pass on such a dispute

[1] The cases cited involved the canon law or traditional polity of more than two score denominations, such as Cumberland Presbyterian, Presbyterian U. S. A., Finnish Lutheran, German Lutheran, Norwegian Lutheran, Swedish Lutheran, Icelandic Lutheran, Methodist Episcopal South, Methodist Episcopal, Methodist Protestant, African Methodist Episcopal, A. M. E. Zion, Baptist, Episcopal, Disciples (Christian or Church of Christ), Evangelical, Reformed, Friends, Shakers, Congregational, United Brethren, Church of God, Pentacostal, Pilgrim Holiness, Russian Orthodox, Syrian Antiochean Orthodox, Carpatho-Russian Orthodox, Roman Catholic of Ruthenian Rite (Uniate), Roman Catholic (Latin Rite), etc.

and award the use of church property to one of the litigants, would abridge the religious freedom of the losing party. While it is true that some of these cases antedated the adoption of the Fourteenth Amendment (1868) and many of them antedated the first explicit reading of the First Amendment into the Fourteenth (*Gitlow* v. *New York*, 1925, 268 U. S. 652, 666, citing dissent of Harlan, J., in *Patterson* v. *Colorado*, 1907, 205 U. S. 454, 462, and subsequent decisions), yet all of the state constitutions contained guaranties of religious freedom at the time when these cases were decided.

If the losing litigant in every church property case may raise a federal question under the First and Fourteenth Amendments, this Court will be flooded with cases of that description, of which there seems to be no ending (see topic "Religious Societies" in current digests; also, Zollman, American Church Law, rev. ed., 1933, cc. v-viii).

But, obviously, the adjudication of a church property case neither respects "an establishment of religion" nor impinges on "the free exercise thereof." Surely, all of the Justices of this Court, including those who dissented in *Zorach* v. *Clauson*, 343 U. S. 306, would agree that religious societies and their members may resort to the courts when they cannot settle otherwise their disputes over the use of church property. This, like police or fire protection of church properties, is a public service which the State renders to the Church and is peculiarly appropriate to the State's position as supreme guardian of property devoted to a charitable use (M. Br., pp. 53-54). The rendition of this service does not breach the traditional wall of separation. As was said by this Court, in a case where federal jurisdiction was based on diversity of citizenship,

"• • • Much as such dissensions among the members of a religious society should be regretted, a regret which is increased when passing from the control of the judicial and legislative bodies of the entire organization to which the society belongs, an appeal is made to the secular authority; the courts when so called on must perform their functions as in other cases.

Religious organizations come before us in the same attitude as other voluntary organizations for benevolent or charitable purposes, and their rights of property, or of contract, are equally under the protection of the law, and the actions of their members subject to its restraints. • • •"

Watson v. *Jones*, 1871, 13 Wall. 679.

If, then, the judicial determination of disputes over church property is not *ipso facto* an intrusion into a forbidden field, the question arises—under what peculiar restraints, if any, are the courts subjected by the First and Fourteenth Amendments in this class of cases?

Appellants state categorically that "*Watson* v. *Jones* is part of the Constitution" (Ap. Br., p. 32). Judge Conway's opinion states that the rule of denominational control "is by no means a constitutional doctrine • • •" (R. 280).

The latter view is, it is submitted, the correct one. Whether, and to what extent, and subject to what modifications and qualifications, the doctrine of *Watson* v. *Jones* is to be applied to church property cases, is exclusively a state matter.

The doctrine is, in reality, two-fold, embracing (1) denominational control and (2) conclusiveness of ecclesiastical decisions.

So far as concerns *denominational control* of incorporated societies, there would appear to be no constitutional question.

When in New York, prior to 1875, the members of a local parish were incorporated they accepted the corporate franchise with the understanding that the by-laws of their own corporation, and not the rules of the general denomination, were to govern the administration of the property, in case a dispute were to arise and be submitted to the courts (*Robertson* v. *Bullions*, 1854, 11 N. Y. 243). This situation, of course, did not prevent the governing organs of the denomination from enforcing ecclesiastical discipline against the local congregation for violation of the general denominational rules (*ibid.* at p. 264).

Had this situation not been altered by statute (L. 1875, c. 97, §4, now Rel. Corps. L. §5), the courts of New York today would not be constrained by the federal constitution to impose denominational control on religious corporations. It would be a state question only.

So far as concerns *conclusiveness of ecclesiastical decisions*, the question of whether *Watson* v. *Jones* must be followed is non-federal. A reading of the majority opinion in that case discloses that on this branch of the doctrine the Court based its conclusion on (1) the implied consent of the members to the ecclesiastical government, i.e., the principle of *arbitration* and (2) the greater competence of ecclesiastical tribunals, i.e., the principle of judicial economy or *convenience* (13 Wall. at p. 729). While it is true that Mr. Justice Miller referred to "a broad and sound view of the relations of church and state under our system of laws" (*ibid*, at p. 727), he does not indicate that the opposite conclusion from that reached by the Court would have respected "an establishment of religion" or prohibited "the free exercise thereof."

(Ironically enough, the case would have been decided differently had *Erie Railroad Co.* v. *Tompkins,* 1938, 304 U. S. 64 been decided before *Watson* v. *Jones;* for the Court of Appeals of Kentucky had previously held that the competence of the ecclesiastical tribunal could be inquired into [*Watson* v. *Avery,* 1867, 2 Bush. 332] but this Court refused to adopt that view [13 Wall. at pp. 732-734].)

For purposes of argument, let it be supposed that the present case had been tried without reference to Article 5-C. Assuming that the doctrine of *Watson* v. *Jones* would have been *prima facie* applicable, the trial court would have been confronted with the following questions:

(*a*) Was patriarchal ukase No. 28 of January 16, 1924, purporting to dismiss Platon for "public acts of Counter-Revolution" (R. 223), without a hearing, and signed by Patriarch Tikhon while sick and under house arrest (R. 181), such a decision by a church tribunal as to be binding on a civil court?

(*b*) Did the suppression of the patriarchal central office during 1922-1924 constitute such a break in communication with the *Old Diocese* as to justify the creation of an adminstratively autonomous district pursuant to patriarchal ukase No. 362 of November 20, 1920?

(*c*) Is the policy of the Patriarchate to require an obligation of "loyalty" to the Soviet regime from the clergy abroad open to question in a civil court?

(*d*) Are the patriarchal decrees placing Platon and Theophilus under interdict, without hearings before a Court of Bishops, binding on a civil court in a case involving the right to control property?

(*e*) Is the patriarchal ukase No. 98 of February 16, 1945, laying down terms of reunion, binding on a civil court?

Each of these questions would have involved a determination as to the extent to which, and the modifications and qualifications subject to which, the doctrine of *Watson* v. *Jones* was to be applied. That, as has been shown, is a state matter. The court would not have been prevented by the First and Fourteenth Amendments from finding an answer to each of these questions.

Obviously the answer in each instance would have been found in the status of the Patriarchate from 1922 to the date of trial. Without a finding on that subject the trial court would not have been in a position to apply the doctrine of *Watson* v. *Jones*.

It follows that a judicial finding that the Patriarchate was "no longer capable of functioning as a true religious body" would have involved no federal question.

B. An explicit legislative finding as to the status of the Patriarchate would have raised no federal question.

Let it be supposed that the legislature had held hearings on the subject and made an explicit finding to the effect that the Patriarchate was "no longer capable of functioning as a true religious body". This would have been pertinent to a determination as to whether, and to what extent, and subject to what modifications and qualifications, the doctrine of *Watson* v. *Jones* was to be applied in a general class of cases, viz.: disputes over the control of church properties in the State of New York which had been part of the *Old Diocese*. The legislature had prescribed that the property of all religious corporations should be administered subject to denominational control (Rel. Corps. L. § 5) and, in the case of particular denominations had enacted additional explicit instructions to similar effect (*ibid.* §§ 69:3, 169d.2, 225k, 295.3, 330.1). As to the Russian Orthodox church properties, however, the

general rule was not sufficient. In case of litigation over a local church property how was a New York court to know whether the decisions of the Patriarchate or of the *Russian Church in America* were to govern? True, in the Yonkers case (*supra*, p. 14) the courts had sustained the authority of Theophilus, as against Benjamin, over a local church property on the basis of the patriarchal ukase, No. 362, of November 20, 1920. But, according to that case, the efficacy of the ukase was to continue only "until such time as the existing civil authorities * * * would cease interfering with the church" (N. Y. L. J., Jan. 6, 1940, p. 97, col. 5). That left the state law in an unsatisfactory condition, for it would still be necessary in every individual case to introduce proof as to the then current state of affairs in Russia—practically an impossible task for a litigant not favored by the Soviet government. Frequent litigation was likely to occur in the future; in fact, the New York courts, prior to 1945, had been plagued with lawsuits over Russian Orthodox church properties (M. Br. p. 94 second footnote[2]). Under those circumstances a formal investigation and explicit finding by the legislature would have been in order and would have raised no federal question.

C. A legislative finding as to the status of the Patriarchate is implicit in the statute.

In the absence of a formal inquiry and explicit finding by the legislature, the Court of Appeals properly resorted to presumption. Judge Conway's discussion of the subject (R. 281-284) cannot be improved on and need not be paraphrased.

Appellants' objections (Ap. Br. pp. 36-44) to Judge Conway's reasoning may be disposed of briefly.

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[2] In addition to the cases referred to in the footnote, mention may be made of the unreported case of *Kedroff* v. *Mt. Olivet Cemetery, et al.*, N. Y. Supr. Ct., Queens Co., Index No. 1195/1941.

Appellants dismiss as "fantastic" (Ap. Br. p. 36) the imprisonment of Tikhon and the emergence of the Living (Renovated) Church[3] as bearing on the status of the Patriarchate. But these were the very facts that forced the *Old Diocese* to set up an autonomous organization in order "to keep our American Church from Soviet interference" (R. 186). From the imprisonment of Tikhon until 1927 the central office of the Patriarchate was suppressed; certainly during that period the Patriarchate was not "capable of functioning as a true religious body."

Appellants have very little to say about the Renovated Church but lean heavily on *Kedrovsky* v. *Rojdesvensky*, 1925, 214 App. Div. 483; aff'd, 1926, 242 N. Y. 547 (Cathedral Case), where the appellate courts had been misled into believing that a schismatic sect—fostered by the Soviet government, preaching "capitalism to be a mortal sin, and a battle with capitalism to be holy to Christians" (R. 257)—was the true Church of Russia and its representative the canonical archbishop of the *Old Diocese*. As Judge Conway points out, the findings of the Appellate Division in the Cathedral Case were "contrary to what is now conceded [by the present appellants (R. 163-164)] to be the fact" and the "control of all phases of Russian life by the Government was not as apparent in 1924 as it is a quarter of a century later" (R. 262). And when the Cathedral Case "was in the courts," remarks Mr. Justice Van Voorhis, "it evidently did not suit the purposes of the ruling power in Russia to furnish evidence to establish the lack of canonicity of the group which succeeded in that lawsuit" (Jurisd. Statement, p. 111).

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[3] Appellants say (Ap. Br., p. 36) that the Living Church disappeared in 1925. According to the news photographer Margaret Bourke-White, who visited Russia in 1941, the schismatic church was still in existence and totaled "perhaps 10% of all the pious in the U. S. S. R." (Life, vol. 11, No. 15, October 13, 1941).

The birth, life and death of the Renovated Church are striking evidence of the complete control of church activities by the Bolsheviks. When it suited their purposes they set up that Church and successfully used it to pull the wool over the eyes of the New York courts. When the Renovated Church had fulfilled its purpose, it was thrown into the ash can; and appellants now concede that it was illegal from the start. Yet, in the face of that concession, the defense in the present case is an attempted repetition of the Kedrovsky business: it is as monotonous as a newsreel that we have all seen before; here we are back where we first came in.

As to the "loyalty" pledge appellee stands squarely on the testimony of Metropolitan Benjamin himself (M. Br., pp. 62-66) as well as other evidence in the record (R. 211; 228). Appellants seek to reconcile the demands of "loyalty" with the Christian tradition of rendering "to Caesar the things that are Caesar's, and to God the things that are God's" (Mark 12:17). But they do not explain why "a Church of American citizens" (R. 150) should be "loyal" to Stalin!

Appellants print as an appendix to their brief on reargument a declaration of the Russian bishops published in 1927 (Ap. Br., pp. 40, 67-70) as proving the independence of the Patriarchate. This is a high minded document, admirable in every respect. The only trouble is that in actual practice the precepts in this document have not been lived up to. For example the message says (Ap. Br., p. 67):

> "• • • The Church also stands aloof from the political organization of authority, for it is loyal to the governments of all the countries within the limits of which it has its own members. It lives at peace with all the different types of state organization, beginning with such despots as were formerly in

> Turkey and ending with such Republics as the North American United States. * * *"

Those were fine words in 1927. But they sound hollow today, compared with the fiery attacks on the United States which have been published in the official journal of the Patriarchate (*infra*, p. 50; M. Br., p. 118) and the testimony of Benjamin that "loyalty" to the Soviet regime is still required of the American faithful. When two Caesars are in the position of the United States and Russia today no Christian can be loyal to both.

The 1927 message also said (Ap. Br., p. 68):

> "* * * The Church wants religion to flourish. Communism wants it to perish. With such deep difference in fundamental principles separating the Church and State, it becomes impossible that an inner nearness or reconciliation could exist between them. * * *"

Again brave words had to be eaten, as shown by the following article in The New York Times of August 7, 1949:

> "Moscow, Aug. 6—Alexius, Orthodox Patriarch of Moscow and all Russia, declared today that the excommunication of all persons supporting Communism 'would fundamentally contradict the main tenets of the orthodox Christian faith.'
>
> Alexius' statement was published in Izvestia, the Government newspaper, along with a series of questions eliciting it that had been submitted by a Reuter's news agency correspondent in Moscow.
>
> **Alexius furthermore declared there could be no conflict between loyalty to the Soviet state and loyalty to the Russian Orthodox Church.**
>
> 'Such a conflict,' he said, 'not only does not exist but also cannot exist if believing people will adhere

to the precise meaning of the evangelical commandments and testaments of the Apostles.'

* * * * * *

The declaration by the Patriarch of Moscow on the question of a conflict between the Soviet state and the church asserted that 'to this question there can be only one answer.' This was reminiscent of a statement by Alexius somewhat more than a year ago when, on being asked whether there was any conflict between the theory and practice of communism on the one hand and religious belief on the other, he replied: **'The Orthodox Church has no conflicts whatsoever within the Soviet state.'**

At that time he declared that freedom of religion was guaranteed by the Soviet Constitution, that the number of churches was increasing and that 'from Stalin the church has received a favorable support on all church questions that arise.'

* * * * * * *"

There is ample evidence in the record to support the presumption of a legislative finding as to the status of the Patriarchate, including, among other items, the following:

(*a*) The frontal attack on religion by the Bolsheviks in the early years after the Revolution (R. 46-47);

(*b*) The arrest and imprisonment of Patriarch Tikhon (R. 47-50);

(*c*) The Renovated Schism (R. 50-56; 256-257);

(*d*) The confinement of Tikhon in a monastery after his release from prison (R. 57);

(*e*) The decree dismissing Platon for "acts of Counter-Revolution" extracted from the ailing Patriarch (R. 223-224; 181);

(*f*) The appointment of Kedrovsky as ruler of the American diocese (Cathedral Case record, fols. 1673-1674);

(*g*) The suppression of the Patriarchate from 1922 to 1927 (R. 80);

(*h*) The arrest of the three *locum tenentes* named by Tikhon (R. 57);

(*i*) The requirement of "loyalty" from Sergius (R. 80);

(*j*) The refusal to permit the election of a Patriarch until 1943 or the holding of an All Russian sobor until 1945 (R. 107);

(*k*) The imposition of a congregational polity on the Church in Russia (R. 58-59);

(*l*) The demands of "loyalty" made by Sergius and Benjamin on the American clergy (R. 113-114; 117; 125; 211; 228);

(*m*) The appointment of Benjamin as patriarchal exarch and archbishop and the establishment of the *New Patriarchal Diocese* (R. 223-225);

(*n*) The revocation of the visa on the passport of the lay delegate to the 1945 Moscow sobor and the putting down of the clerical delegates' plane in Siberia[4] (R. 212-213);

(*o*) The failure of the Patriarchate to give the American delegates an opportunity for discussion (R. 213);

(*p*) The terms of the patriarchal ukase, No. 98, of February 16, 1945 (Def. Ex. D, R. 227; 213-214);

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[4] Benjamin testified that the delegates arrived "a day late" for the sobor (R. 126), but both of the delegates, Bishop Alexy and Fr. Dzvonchik (R. 212), participated in the official announcement (Pl. Ex. 16) which stated that they arrived in Moscow *ten days* after the sobor had adjourned (R. 213).

(q) The refusal of the Patriarch to concede full autonomy to the *Russian Church in America* (M. Br., pp. 43-44).

Outside of the record, of course, is the general knowledge that no organization is free in the monolithic Soviet state. And since the trial below the Patriarchate has brazenly assumed an active rôle in the official Soviet propaganda apparatus (M. Br., pp. 45-46; 118, *et seq.*; *infra*, pp. 50, *et seq.*).

Appellants' arguments that the request for reunion in 1946 was a recognition of the free status of the Patriarchate are sufficiently answered by Judge Conway (R. 273-274) and Mr. Justice Van Voorhis (Jurisd. Statement, pp. 100-102).

Appellants' references to Article XV and §15(3) of the Religious Corporations Law, and Governor Dewey's speech at Buffalo in 1943, have been already dealt with (M. Br., pp. 103-105).

Finally, appellants rely on *West Virginia School Board of Education* v. *Barnette*, 1943, 319 U. S. 624 and *Thomas* v. *Collins*, 1945, 323 U. S. 516 as forbidding presumptions in a religious freedom case. But in both those cases there were admittedly legislative restrictions on liberties protected by the First Amendment, while the statute here is not of that category. Also, there seems to be some doubt as to whether the distinction made in those cases is still valid (see dissent of Black, J., in *Beauharnais* v. *Illinois*, 1952, 343 U. S. 250, 269).

D. The implied legislative finding is a state matter.

It has already been shown that an explicit finding would have involved no federal question (*supra*, p. 28). The same holds true as to the implicit finding.

Accordingly, the presumed legislative finding that the Patriarchate in Russia is "no longer capable of functioning as a true religious body" is a state matter exclusively.

POINT II.

No federal question is involved in the legislative mandate that religious corporations "founded and established for the purpose and with the intent of adhering to, and being subject to the administrative jurisdiction of" the *Old Diocese* shall be and remain subject to the jurisdiction and authority of the governing organs of the *Russian Church in America*. (Rel. Corps. L. §107.1).

A. The validity under canon law of the action of the Detroit sobor of 1924 is a state matter.

Just as the state and federal courts examined the powers of the general assemblies of the Cumberland Presbyterian Church and the Presbyterian Church U. S. A. to effect a merger (M. Br., p. 93n), so here, in the absence of the statute, it would have been proper for the trial court to inquire into the validity of the action of the Detroit sobor of 1924. No federal question would have been involved.

Here there is an explicit legislative finding. The legislature described the *Russian Church in America* as "an administratively autonomous metropolitan district created pursuant to resolutions adopted at a general convention (sobor) of said district held at Detroit, Michigan, on or about or between April second to fourth, nineteen hundred twenty-four" (Rel. Corps. L. §105). The presumed canonical basis of this finding was the partiarchal ukase, No. 362, of November 20, 1920.

Appellants bluntly assert that the autonomy was not declared pursuant to the ukase (Ap. Br., p. 18n9). The evidence[5] is to the contrary (R. 185). Judge Froessel says that the "American sobors * * * invoked the ukase of 1920" (R. 285). Judge Conway says that at the sobor of 1924

> "It was pointed out that the North American Diocese, for a good many years, had been 'cut off from the highest organ of the administration of the Russian Church' and that that situation made operative the above quoted ukase of 1920 providing for local administration and election of bishops * * *" (R. 261).

Appellants also remark that "the district did *not* rely on this order [ukase No. 362] in the *Kedrovsky* trial in 1924—a most strange omission if the autonomy had been based on it" (Ap. Br., p. 18n9). Appellants ignore the fact that the Cathedral Case was started before the Detroit Sobor and was tried on the basis of the situation existing at the commencement of the action. Although appellants consistently try to give a different impression (Ap. Br., pp. 6, 16, 18n9), the truth is that in the Cathedral Case the sole issue was whether Kedrovsky or Platon was the canonically *appointed* archbishop; the only reference to the *election* of Platon at Detroit was to show recognition of his appointment (M. Br., pp. 24, 29).

The Yonkers Case confirmed the validity of the 1920 ukase as the basis of autonomy (*supra*, p. 14). Article 5-C, therefore, was declaratory of the decisional law as it existed at the time of enactment. Both the decision and the statute, in this respect, concerned a state matter.

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[5] By an error of the speaker, the reporter or the translator, the date 1921, instead of 1920, appears in the minutes. Also the ukase is referred to as a "circular letter." But the substance of the speaker's remarks shows indubitably that he was referring to ukase No. 362.

B. The invalidity of the interdicts placed upon Platon and Theophilus, insofar as affecting the control of property in New York dedicated to religious use, is a state matter.

Findings to the effect that the interdicts were invalid are implicit in the statute. Their invalidity would follow from the findings that the autonomy was valid and that at all times since the date of the autonomy the Patriarchate has not been capable of functioning as a true religious body. It also may be pointed out—a fact not noted in the opinions below—that under ancient canon law the interdicted bishops were entitled to a trial before a Court of Bishops (R. 120-122). There was an insufficient number of bishops in the United States to try Platon (R. 139), so that he would have had to go to Moscow for a trial (R. 119). As he "was known in Russia as an opponent to the Soviet government" (R. 115), it is obvious that a trip to Russia would have meant suicide. The same was true of Theophilus.

In the absence of the statute it would have been proper for the trial court to inquire into the validity of the interdicts.

> "• • • when civil rights as to property are involved the civil courts will insist that an accusation be made, that notice be given, and an opportunity to produce witnesses and defend be afforded, before they will give effect to an expulsion or suspension of the kind here attempted. Hoffman, Ecclesiastical Law, 276, 277."
>
> *West Koshkonong Cong.* v. *Ottesen*, 1891, 80 Wis. 62, 75.

See, also, *Jennings* v. *Scarborough*, 1894, 27 Vroom (56 N. J. L.) 401.

The implicit legislative determination, therefore, was proper and raised no federal question.

C. The invalidity of the policy of requiring "loyalty" from the American flock is a state matter.

Benjamin was unable to point out any canonical basis for this policy except the command of Jesus to give to Caesar what is Caesar's (R. 123). But Jesus did not command loyalty to two Caesars.

The statute implicitly finds that the "Church of American citizens" has been justified in refusing to give a pledge of "loyalty" to a foreign power as a condition of retaining enjoyment of their own accustomed shrines in New York.

This, again, is exclusively a state matter.

D. The validity of the American Church's position in rejecting all terms of reunion short of complete autonomy is a state matter.

By complete autonomy is meant self-government with only symbolical headship in the Patriarch.

Appellants (Ap. Br., p. 22) refer to certain suggested terms of reunion contained in the circular letter of the metropolitan council of July 10, 1945 (R. 217-218). However, these were never approved by the council of bishops and were never presented to the Patriarch. The terms which were actually presented to Metropolitan Gregory in 1947 were offered in evidence but objected to by appellants' counsel (R. 132-133). They provided for symbolical suzerainty only.

As Mr. Justice Van Voorhis said (Jurisd. Statement, pp. 100-101):

> "* * * The repeated efforts of these American communicants to achieve some tangible expression of their spiritual unity with believers in Russia, but without being subject to the formal functioning of the central church organization as a department of the Russian state, should count in their favor in this action. * * *"

The implicit finding of the legislature that the *Russian Church in America* has acted correctly in rejecting all terms of reunion short of complete autonomy, is vindicated by the recent actions of the Patriarchate. Metropolitan Nicholas of Krutitsk and Kolomen, the second hierarch of the Patriarchate (M. Br., p. 46), has been travelling about Europe, attending "peace" conferences and delivering himself of vituperative attacks on the United States (M. Br., pp. 122, 126, 128, 131, 137, 140, 143; *infra*, pp. 50-53; 56-63; 72-73; 75-77; 80). No epithets directed against this country are too outrageous to be published in the Patriarchate's official organ. So long as the Patriarchate is being utilized as an instrument of Soviet propaganda administrative connection between it and "a Church of American citizens" is inconceivable.

The implicit legislative finding in this respect is a state matter.

E. The validity of the organizational structure of the *Russian Church in America* is a state matter.

The statute makes explicit reference to the sobors of 1924, 1934 and 1937, to the metropolitan archbishop, council of bishops and metropolitan council, and to the governing statutes and normal parish statutes, of the *Russian Church in America*. The correctness of its organizational structure, in accordance with the enactments of the Moscow sobor of 1917-1918, the patriarchal ukase No. 362 and the resolutions of the Detroit sobor of 1924 (R. 187-188), is indisputable.

These are the "judicatories," and these are the canon laws, which are controlling, according to the legislative mandate. No federal question is involved.

F. The identification of the *Russian Church in America* with the *Old Diocese* is a state matter.

The erroneous statement of appellants (Ap. Br., p. 55) that the *Russian Church in America* "had belonged to a larger group" constituting the *Old Diocese*, has already been answered (M. Br., p. 55).

The legislature made an explicit finding on this subject (Rel. Corps. L. §105). It is a state matter.

G. The mandate that the properties included in the *Old Diocese* should be administered in accordance with the rules of the *Russian Church in America*, is a state matter.

This mandate inevitably follows from the findings of fact, explicit or implicit, undergirding the statute. As there is no federal question involved in any of the findings, so there is none involved in the mandate.

POINT III.

No federal question is involved in the award of possession to appellee.

A. The questions of (1) Where is the beneficial title to the Cathedral? (2) Who are the members of appellee? (3) For what purpose may the Cathedral be used? and (4) Who are the proper denominational governing authorities?—are all state matters.

(1) *Beneficial Title.* The full legal and beneficial title, as determined by the decisional law of the state (M. Br., p. 53), is in appellee. This is a state matter.

(2) *Membership of Appellee.* As determined by the decisional law of the state (M. Br., pp. 55-56), the members of St. Nicholas' Corporation were originally the mem-

bers of the parish congregation, subsequently the members of the *Old Diocese*.

As shown above (pp. 36-37, 41), the legislative indentification of the *Old Diocese* with the *Russian Church in America* was declaratory of the decisional law as expounded in the Yonkers Case, and is a state matter. The judgment appealed from in effect treats the membership of appellee as identical with the membership of the *Russian Church in America*—again a state matter.

(3) *Trust*[6] *Purpose.* The judgment appealed from also in effect directs the application of the Cathedral to a particular religious use which is either in accordance with the orignal trust purpose or as close to it (*cy près*) as circumstances will permit (M. Br., pp. 71-75). This matter concerns the state as *parens patriae* (*ibid.*, pp. 53-54) and raises no federal question.

(4) *Denominational authorities.* The judgment in effect designates the *Russian Church in America* as the proper controlling body. This conclusion necessarily follows from the application of the statute to the Cathedral. As all of the underlying determinations are state matters, so is this final result.

B. The award of possession to appellee does not violate the applicable "canon law."

"Canon law" is a broad term, covering statutes, codes, rules, regulations, decrees and decisions of ecclesiastical organs having legislative powers. In the field of faith (e.g. Nicene Creed), dogma, orders (e.g. Apostolic Succession), liturgy and ritual, concededly all Russian Orthodox faith-

[6] The distinction of property vested absolutely in a religious corporation from that held on a technical "trust" has already been pointed out (M. Br., pp. 53-54).

ful are bound by the same laws. But the "canon law" on which appellants lean so heavily is of a different character, viz.: administrative. They rely on two alleged rules: (1) the ruling bishop of the *"American Archdiocese"* is appointed[7] by the Patriarchate; (2) the ruler of the "American Archdiocese" has the prerogative of occupying the Cathedral. If by the term "American Archdiocese" appellants refer to the *New Patriarchal Diocese*, the first of these rules is irrelevant and the second begs the question which was passed on by the legislature to the contrary effect. Since, as a state matter, the legislature has found the *Russian Church in America* to be the successor of the *Old Diocese*, and has directed that the rules of the autonomous district should govern the administration of the properties which formed part of the *Old Diocese*, there is no conflict between the judgment and the applicable "canon law."

C. The judgment does not prohibit the free exercise of his religion by the "canonical archbishop."

As has been shown, the "canon law" determined by the legislature, as a state matter, to be applicable to the properties which formed part of the *Old Diocese*, is the body of administrative statutes adopted by the sobors of the *Russian Church in America* (Rel. Corps. L. §107). Pursuant to these statutes the "canonical archbishop" is elected by the American sobor. The judgment makes it possible for him to serve in the Cathedral and, conversely, makes it

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[7] Theoretically, since the *Old Diocese* was a full-fledged diocese, and not a mission (R. 11; 19), it was normally entitled to elect its ruling bishop, subject to confirmation by the Supreme Church Authority i.e. Patriarch, Synod and Supreme Church Council (R. 18-20). Probably, however, the democratic procedure envisaged by the enactments of 1917-1918 (M. Br., p. 11) was never put into actual practice within or without Russia. The trend of the present Patriarchate appears to be in the other direction (R. 245). The point is of no importance, as the *Old Diocese* has been succeeded

impossible for the patriarchal appointee to interfere with such ministry. No federal question is involved.

D. The statute, as applied in the case at bar, no more interferes in the internal affairs of a religious body than the judgment of any court which is called on to decide a dispute over the use of church property.

As has been seen (*supra*, p. 3), courts have been frequently appealed to in order to determine which faction of a religious body is entitled to control the use of property held on a religious "trust" (non-technical). These matters are determined by state law (*cf. Sims* v. *Greene*, 3 Circ., 160 F. 2d 512, 515). There is no intrusion into a forbidden field. If the courts refused to take jurisdiction, the administration of church properties would be in chaos: the peace and order of the state would be disturbed. No federal question is involved.

The same reasoning applies to a statute which lays down rules to be followed by the courts in a general class of church property cases likely to arise in the future.

E. The statute does not outlaw the patriarchal jurisdiction from the state.

Appellants grossly overstate the scope of the statute (Ap. Br., p. 33). The mandate of §107.1 and §107.3 applies only to religious corporations which (1) formed part of the *Old Diocese* before April 2-4, 1924, or came into the *Russian Church in America* after that date. The statute does not apply to any religious corporations which were founded with the intent of adhering to the *New Patriarchal Diocese* or came into that body from a source other than the *Russian Church in America*.

The Patriarchate is free to found or attract to its jurisdiction as many Russian Orthodox churches in New York as it can, provided they never formed part of the *Old*

Diocese or the *Russian Church in America*. How, then, can appellants charge that the statute outlaws the Patriarchate from the state? They themselves point to Article XV which expressly provides for the incorporation or reincorporation of religious societies which are foolish enough to stick their necks in the noose i. e. place themselves under the administrative jurisdiction of the Patriarch.

F. The canonicity of the *Russian Church in America* and its metropolitan archbishop is the concern of appellee, not of appellants.

Appellants attack the statute as directing "all Russian Orthodox churches to 'recognize' and subject themselves to the 'jurisdiction' of a bishop and a district whose canonicity, whose apostolic succession, they may hold in doubt" (Ap. Br. p. 34). This is the veriest nonsense. As pointed out above (p. 44), the mandate applies only to a certain class of churches. Appellants have failed to prove that there is a single religious corporation subject to the statute the members of which are not satisfied with the canonicity of the district and its metropolitan and are not happy to form part of the district. Appellants have no standing to raise imaginary doubts on behalf of imaginary churches.

The mandate of the statute, as applied below, operates on appellee and its trustees. So long as they are satisfied with the canonical state of affairs, appellants need not be concerned.

Incidently, the Archbishop of Constantinople and Ecumenical Patriarch, whose primacy of honor in the Eastern Orthodox communion is universally recognized, at his last mass in this country, invited a bishop of the *Russian Church in America* to con-celebrate with him—a recognition of full canonical status (N. Y. Times, January 24, 1949 as corrected in issue of January 25, 1949).

POINT IV.

The judgment may be sustained on state grounds.

In the appellate courts below the argument of counsel, both written and oral, dealt principally with the construction of the statute. Comparatively small space or time was devoted to a discussion of constitutionality. The opinions of Judges Conway and Froessel appear to be devoted mainly to a recital of the background of the statute as an aid to its construction.

Concededly, the judgment is based on the statute; and the court did purport to pass on a federal question; but it is submitted that the question was so insubstantial that it need not have been decided. This Court is not bound to accept the certificate of the Court of Appeals that the federal question was *necessarily* passed on. If this were not so the Court would be flooded with appeals on federal questions of no substance. Especially is this true of church property cases.

Conclusion.

The appeal should be dismissed or the judgment should be affirmed.

Respectfully submitted,

RALPH MONTGOMERY ARKUSH,
Counsel for Appellee.

APPENDIX A.

RELIGIOUS CORPORATIONS LAW

ARTICLE 5-C [New]

RUSSIAN ORTHODOX CHURCHES

Sec.

105. Definitions.

107. Government of incorporated Russian Orthodox churches; powers and duties of trustees.

Article added by L. 1945, c. 693, eff. April 10, 1945.

§105. Definitions.

The "Russian Church in America", as that term is used anywhere in this article, refers to that group of churches, cathedrals, chapels, congregations, societies, parishes, committees and other religious organizations of the Eastern Confession (Eastern Orthodox or Greek Catholic Church) which were known as (a) Russian American Mission of the Russian Orthodox Church from in or about seventeen hundred ninety-three to in or about eighteen hundred seventy; (b) Diocese of Alaska and the Aleutian Islands of the Russian Orthodox Church from in or about eighteen hundred seventy to in or about nineteen hundred four; (c) Diocese of North America and the Aleutian Islands (or Alaska) of the Russian Orthodox Church from in or about nineteen hundred four to in or about nineteen hundred twenty-four; and (d) Russian Orthodox Greek Catholic Church of North America since in or about nineteen hundred twenty-four; and were subject to the administrative jurisdiction of the Most Sacred Governing Synod in Moscow until in or about nineteen hundred seventeen, later the Patriarchate of Moscow, but now constitute an administratively autonomous metropolitan district created

pursuant to resolutions adopted at a general convention (sobor) of said district held at Detroit, Michigan, on or about or between April second to fourth, nineteen hundred twenty-four.

A "Russian Orthodox church", as that term is used anywhere in this article, is a church, cathedral, chaptel[1], congregation, society, parish, committee or other religious organization founded and established for the purpose and with the intent of adhering to, and being subject to the administrative jurisdiction of said mission, diocese or autonomous metropolitan district hereinabove defined as the Russian Church in America. Added L. 1945, c. 693; amended L. 1948, c. 711, §1, eff. March 31, 1948.

* * * * * *

§107. Government of incorporated Russian Orthodox churches; powers and duties of trustees.

1. Every Russian Orthodox church in this state, whether incorporated before or after the creation of said autonomous metropolitan district, and whether incorporated or reincorporated pursuant to this article or any other article of the religious corporations law, or any general or private law, shall recognize and be and remain subject to the jurisdiction and authority of the general convention (sobor), metropolitan archbishop or other primate or hierarch, the council of bishops, the metropolitan council and other governing bodies and authorities of the Russian Church in America, pursuant to the statutes for the government thereof adopted at a general convention (sobor) held in the city of New York on or about or between October fifth to eighth, nineteen hundred thirty-seven, and any amendments thereto and any other statutes or rules heretofore or hereafter adopted by a general convention (sobor) of the Russian Church in America and shall in all other respects conform to, maintain and follow the faith, doctrine, ritual, communion, discipline,

[1] So in original. Probably should read "chapel".

canon law, traditions and usages of the Eastern Confession (Eastern Orthodox or Greek Catholic Church):

* * * * * *

3. The trustees of every Russian Orthodox church shall have the custody and control of all temporalities and property, real and personal, belonging to such church and of the revenues therefrom and shall administer the same in accordance with the by-laws of such church, the normal statutes for parishes of the Russian Church in America approved at a general convention (sobor) thereof held at Cleveland, Ohio, on or about or between November twentieth to twenty-third, nineteen hundred thirty-four, and any amendments thereto and all other rules, statutes, regulations and usages of the Russian Church in America. Added L. 1945, c. 693; amended L. 1948, c. 711, §2, eff. March 31, 1948.

* * * * * *

APPENDIX B.

TRANSLATIONS OF EXTRACTS FROM ARTICLES PUBLISHED IN JOURNAL OF THE MOSCOW PATRIARCHATE.

No. 1, January, 1951.

The Orthodox Church and Peace

(p. 10)

. . . . . .

The Orthodox people also express their angry protest against the interference of one government into the internal affairs of another. For the purpose of seizing foreign lands, for the purpose of enslaving small nations, at the present time strong governments invade the boundaries of small nations. Swaggering in their strength, corrupted by insatiable enrichment at others' expense, the big business men of the U. S. A. have invaded small Korea and made themselves at home, considering neither the will of the people, nor their national dignity. Witness—the infringement of the rights of a small nation on the part of a strong government, led by a bunch of capitalists, thirsting for gain. . . .

PROF. N. DOKTOUSOV

No. 1, January, 1951.

A Great Service to the Cause of Peace

(In connection with the participation of the Metropolitan of Krutitsk and Kolomen, Nicholas, at the Second World Congress of the Partisans of Peace in Warsaw)

[November 16-22, 1950]

. . . . . .

(p. 12)

Underlining the fact of the union of peoples of different faiths, Metropolitan Nicholas revealed that inner stimulus

by which these people are moved in their noble battle against the instigators of war. "Not only the instinct of self-preservation," he said, "not the fear of another catastrophe was the moving force of these people in their desire to defend the cause of peace. No, we all know that their main stimulus was and is a desire of a high moral order, the desire to prevent the mass crime, which is any new aggression, bringing in its wake the destruction not only of the warring armies, but of the mass of the peaceful population, an example of which is the Korea of the present day."

In the indication of Metropolitan Nicholas of the "aspiration of a high moral character" as being the motive of the movement of the partisans of peace, there sounded a deep faith in the moral worth of people opposing the self-satisfaction and cruel egoism of the instigators of war. The latter, for the sake of their enrichment and rule, would like to exterminate all who interfere with their plans, while the former make it their aim to achieve a position under which the life of nations would not be subject to the danger of extermination. * * *

* * * * * * *

(p. 14)

* * * And Metropolitan Nicholas * * * had the right to say further to the delegates: "Appearing here before you, I speak not only as a citizen of my peace-loving Soviet power—I speak here as a bishop of the Russian Orthodox Church and in her name, with the awareness of the responsibility resting upon me for every word spoken before the God I profess, the Orthodox Church and history, and, as such, I want to be heard first of all by those who consider themselves Christians not in words, but in deeds".

As a citizen of the peace-loving Soviet power, Metropolitan Nicholas stood upon the height of loyalty to his terrestrial sovereign, which is the bulwark of peace in the entire world. As a bishop of the Russian Orthodox Church, he rose above all obstacles separating people, and with the solicitous eye of the sower looked from the ecclesiastical

heights at this boundless field, ready to receive in its deep furrows the seeds of love and peace. In the silence of profound attention it absorbed the good news of Metropolitan Nicholas as to the service of the Church in the cause of peace: "The Russian Orthodox Church," he said, "with the same unconditional decisiveness with which it rose to the defense of trampled native fields and desecrated holy places in the war against the Fatherland, from the very beginning of the threat of a new war, entered the ranks of the fighters for peace. The Russian Orthodox Church, guarding the foundations of the first Christian Church, sees in the service of peace one of the first of its problems".

. . . . . .

(p. 15)

Other Christians, like the Archbishop of Canterbury Geoffrey, justify their negative attitude toward the movement of the defenders of peace by the spiritual blindness of the latter to the Gospels, but, instead of serving for their enlightenment, hide behind a fence of atomic weapons. Such a departure from the Christian solution of the problem indicates nothing else than a shirking from participation in the historical progress by means of which humanity must come to the New Jerusalem. That same shirking may be the result of disbelief in the Gospels, for, speaking of the Christian world, based on love and mercy, certain Christians show no mercy whatsoever when their kinsmen destroy the peaceful population of Korea, and have no need of love whatsoever to oppress colonial peoples. . . .

. . . . . .

(pp. 17-18)

Further Metropolitan Nicholas turned to the Korean events, which have shown the anti-human together with the anti-Christian activity of the enemies of peace. "Is it possible", said Metropolitan Nicholas, "to listen calmly to the stories of witnesses as to what is going on in Korea, of the hangings, executions, dreadful tortures which are applied not only to prisoners, but to the peaceful popula-

tion as well—to children, the aged, women, the sick; of the thousands of bombs dropped on hospitals, orphanages, schools, of the flaming lava pouring from planes and burning cities, towns, farms, people? Is it possible without shuddering, deep pity and compassion for the incredible sufferings of a small peace-loving nation, to hear and read of that hell into which has been plunged a country of the oldest culture and good temper?".

To these two questions, dictated by the indignant Christian conscience of a representative of the Church, there was no need of an answer from the delegates of the World Congress of the Partisans of Peace, because they have gathered together, moved by the same protest against the inhumanity of the new "conquerors" of the world, and here, together with Metropolitan Nicholas, have experienced anew deep indignation at their humanity-hating ideology, expressed by the rector of an American university, Dr. Pence, who approved in print, bacteriological war, the use of gases, the atomic and hydrogen bomb and intercontinental rockets, repudiating any mercy in principle.

Such is the depth of human downfall that the basic, primordial human concepts become in it not only disfigured, but in the mouths of the fallen acquire a directly contrary meaning, according to which "murder is elevated to virtue, while the yearning for peace is called a crime". It is not surprising, therefore, that the camp of war begins to resemble an insane asylum, where feelings of fear and suspicion expose the utter doom of its inmates. Only by the firm will of hundreds of millions of people will be it possible to defend the world from their insane intentions.

Having exposed the enemies of peace, Metropolitan Nicholas contrasted their moral insolvency with the peaceable disposition of his own native land, which considers aggressive usurping wars to be a monstrous crime before humanity. "My country", said the Metropolitan, "does not intend to attack anyone, it wants to live in peace and to cooperate with all the countries of the world, regardless of their political and governmental structure".

A. VEDERNIKOV.

No. 1, January, 1951.

"Glory to God on High, and Peace on Earth, Goodwill to Men"

(pp. 26-27)

. . . . . .

However not only in the past, but actually before our eyes, it would seem that the most firm of peace treaties are crumbling, yesterday's allies become enemies. More than that, organizations, officially organized for the support of peace throughout the world, in the hands of instigators of war turn into weapons of bloody retribution over even completely peaceful populations: the aged, women, children.

. . . . . .

The attitude of the Russian Orthodox Church toward the new instigators of war is presented with exhaustive fullness in the speech of the Metropolitan of Krutitsk and Kolomen, Nicholas, at the First World Congress of the Partisans of Peace in Paris on April 22nd, 1949. "Charred ruins can still be seen," he said "in the cities of Russia and Western Europe, widows have not yet taken off their mourning for killed husbands, mothers still weep their lost sons and in secret hope for the miracle of their return, but new grave-diggers are already lighting their somber smoky lanterns. . . . Many of the kindlers of a new war consider and call themselves Christians. We, servers of the altar of the Orthodox Church, look with wonder at these attempts to cover with Christian, holy to us, evangelical slogans, manifestations of wickedness and satanic hatred. . . ."

V. Nikonov.

No. 2, February, 1951

The Trial of Faithfulness

(p. 140)

. . . . . .

And, despite inimical propaganda, Christians of all countries and faiths condemn the aggression of the Ameri-

cans in Korea, their cruelty in regard to the peaceful inhabitants of that country and their meaningless destruction of towns, cities and the fruit of the toil of a peaceful people. Australian priests have voiced a decisive protest against the cruel bombings to which Korea is being subjected, and have further noted that they protest, not because of political considerations, but because the governments of many countries—members of the United Nations Organization—consider themselves to be Christians.

• • • • • •

A. VEDERNIKOV.

No. 3, March, 1951.

The First Session of the World Council of Peace (p. 7)

Address of the World Council of Peace concerning the Conclusion of the Peace Pact

Responding to the desires of millions of people throughout the world, whatever be their opinion of the reasons, producing the danger of a world war;

in the name of the affirmation of peace and the guaranteeing of international safety;

we demand the conclusion of a Peace Pact between the five great powers—the United States of America, the Soviet Union, the Chinese National Republic, Great Britain and France.

We will regard the refusal of the government of any of the great powers to meet for the purpose of concluding the Peace Pact as bearing witness of the aggressive intentions of that government.

We call upon all the peace-loving countries to support the demand for the conclusion of the Peace Pact, open to all governments.

We place our signatures at the foot of this Address and call upon all people of good will and all organizations, desiring the affirmance of peace, to sign it.

Chairman Joliot-Curie (France), vice-chairmen: Pietro Nenni (Italy), Gabriel d'Arbousier (Black Africa), Bernal (England), Alexander Fadeev (USSR), Leopold Infeld (Poland), Go Mo Jo (China).

Thereafter follow the signatures of: Members of the Bureau; Secretaries and other Members of the World Council of Peace, including the signature of Nicholas, Metropolitan of Krutitsk and Kolomen, participants in the session invited by the World Council of Peace.

(The text of the Address appears in the newspaper "Izvestia" for February 27, 1951, No. 47).

No. 3, March, 1951.

Speech at the First Session of the World Council of Peace

(Berlin, February 23, 1951)

(pp. 15-21)

Dear friends of peace!

With agitation and with passion we speak here of the remilitarization of Germany and Japan, as well as of other questions on our agenda. • • •

Why is it not possible to speak of the remilitarization of Germany and Japan in quiet words? Because these actions of the kindlers of a new military conflagration bear witness to the aggressive war in preparation. For not one of the peoples thinks of attack upon Western Germany, upon Western Europe. Therefore, remilitarization—is war, is aggression.

• • • • • •

The simple people of the whole world thirst for a quiet life and peaceful toil. Here are the pictures appearing before their eyes. • • •

And how does the bunch of insane men, pushing the world towards a new martial catastrophe, see the near future? And what do these people live by now?

Unions and blocs, diplomatic slyness and secret agreements, miserable sops and military maneuvers. The curtailing of peacetime manufacture and the vast accumulation of military stores. Constantly increasing costs of living and the too heavy load of taxes. A golden stream for the insignificant minority and penury for the masses, material impoverishment and moral savagery. Scoffing beyond all bounds at human worth. Fear and hatred.

And what a monstrous incandescence of hatred! They breathe only hatred, feed only on hatred, only hatred is regurgitated by the transoceanic lords. Hatred not only towards those who consider their mongrel "philosophy" an achievement of the past, but also twoard those of "their own" who have merely dared to raise the timid voice of objection. The ceaseless police-cry at "ungrateful" Europe. Threats in the direction of the countries of the Peoples Democracy. And a completely frenzied, ferocious, boiling fury toward the peoples of the Soviet Union.

The great blasphemy, from the Christian point of view, is the fact that these people call themselves Christians. It does not fit into the bounds of reason and of conscience, how all these Trumans, Achesons and Dulles, returning home from their offices, where they have just been bending over the maps of future devastation and murder, put on black frock coats and in the circle of their families read the Bible!

One of the proposed forms of that warfare, which the world criminals are devising against free peoples, they grandly call a "preventive", a precautionary war. In actual fact this formulation simply expands into: "I suspect that you want to attack me, and therefore I attack you first".

This is worse than robbery on the open road. There, the victim, even poorly armed and if not just losing his head, can show opposition to the robber. While here the most base, the lowest form of attack is being prepared—from around the corner, the knife in the back.

Of what war are these people dreaming?

The last world war is before the eyes of all of us. All of us remember the horrors of fascism. * * *

* * * Together with all of the peace-loving humanity of the whole world the German people desire peace and defend it. They protest, together with all the simple and honest people of the whole world, against the remilitarization of Western Europe, being forcibly pressed upon it by American "benefactors", under whose heel the people of this Western Germany, as a representative from there has just clearly stated, fight for the liberty and unity, the indivisibility of their fatherland.

The German people itself damns fascism and nazism and with pain in its heart remembers the horrors of fascism in the last war.

But what? Only five years have gone by, and all humanity has become a witness of the repetition of that nightmare in the American aggression in Korea! It appears that, becoming aggressors, the gentlemen from the imperialistic camp repeat the evil deeds of their former enemies and even transcend them in many ways. Fanatic crimes, it appears—are not only the fruit of fascism and nazism, but they are the natural attributes of the imperialistic clique!

Hitler and his servants might well have envied General MacArthur and his fellow-champions in the Korean aggression.

Apparently, the bestial aspect of imperialism can change only in one direction—become still more ferocious, dreadful, merciless. Improving techniques only place in the hands of the executioners instruments of more refined torture and death.

* * * * * *

* * * if the dreadful happens, if on the arena of life there again bursts forth the beast of war—more than one woman in torment will clutch to her breast the headless corpse of her child * * *

Do we not already see this in Korea?

* * * * * *

We all know how on June 25, 1950, the hordes of the Korean American marionette—Li Sun Man, villainously fell upon the Peoples-Democratic Korean Republic, at the direction of their American masters. The painstaking elaboration of this, horrible in its baseness, act, is known.

It is known how the freedom-loving Korean people answered the bloody attack in one outburst. It is known how President Truman gave the order to the American armed forces in the Far East to come to the aid of his true ally—Li Sun Man.

It is known by what methods the United States of America influenced and [what methods it] uses to put through the UN the resolutions it desires.

The demagogic wails of American propagandists are known, with which they try to cover up the bestial grin of imperialism revealed to the whole world.

The march of military actions on the fronts of this long-suffering land is known. The boundless courage and heroism, with which an ancient people defends its independence and life before the hordes of contemporary savages, is known. What sympathy and condolence are called forth by the sufferings of the Korean people from all freedom-loving humanity, are known.

And there is also known one circumstance of the Korean events, and it is to this circumstance that I want to draw your attention. I have in mind the conduct of the war in Korea by the American aggressors.

When we turn to the official statements of the governmental workers of the Korean Peoples-Democratic Republic; when we listen to the evidence of war correspondents, journalists, up to now not known for the progressiveness of their opinions; when living people speak, who by some miracle have survived after the retreat of the army of occupation, or those who managed to escape from the leprous regions of the "new Americanized order"—we feel that which no document can transmit: we feel that depth of boundless, unassuageable grief into which modernized American monsters have plunged a noble people with its ancient culture.

And so we become convinced that the spirit and substance of fascism have not disappeared, that the delirious dreams of the fanatic Hitler have found their continuers, now trying to realize them.

Their followers do not lag behind their teachers.

From the first day of the lawless aggression the American neofascists began a systematic cannibalistic destruction of the "lower" Korean race.

What do we see?

Cynically violated standards not only of international rights, but of human morals. Executions without trial and inquisitions, secret and public. Dreadful tortures of victims: the cutting off of ears and noses, breasts, putting out of eyes, the breaking of arms and legs, the crucifixion of patriots, the burial alive in communal graves of women with children at their breasts, etc. The rebirth of the customs of savages—the scalping of Korean patriots for "souvenirs".

For the purpose of annihilating the population, the American criminals first of all fanatically killed the political prisoners (from 200,000 to 400,000 persons), forcing them first to dig their own graves; they threw the bodies of patriots [who had been] hung, shot or who died from typhus into a precipice and, to conceal the traces, blew up a cliff above it.

The barbaric bombings of peaceful cities and centers of population were directed exclusively toward the annihilation of the civil population.

In the committees of inquiry of the American troops we see the reborn "technique" of Himler, inhuman tortures of Korean patriots; hanging by the hands, binding [them] behind the back, which is impudently called "aeroplane"; welding handcuffs on the hands behind the back for 2-3 months; torture by electricity, including the electric bed, on which death follows the transmission of a strong current; a wet leather jacket which crushes the breast of the victim on drying; placing those ill of an epidemic sickness in cells filled to overflowing with prisoners.

These civilized savages arranged shooting matches with living targets, binding peasants to posts with barbed wire and shooting each of them over the heart of the target. Reviving the customs of the young-fascists, young-yankees photographed these scenes for their family albums and sent them home to their fiances and wives.

These representatives of the "higher" race practised and practise mass rape of the women and young girls of Korea, rounding them up from surrounding towns, making them drunk on gin and raping them. Not limited to outrages, the miserable victims were driven, in places, into tunnels, shot by machine-guns and buried under the debris of blown up cliffs.

Often one can see on the roads of Korea the still warm corpse of a mother and a crying child at her breast. Cases are known when children, born in prison, were trampled by the soldiers' boots in front of the mother, and then the mother was killed.

On retreating this "flower of culture" destroyed or drove off with it all living things on the evacuated lands.

On attacking, their fury was also vented first of all on the peaceful people.

Thus, on landing on September 15 in the Bay of Inchon everything breathing in the region was annihilated by insane forty-eight hour fire. Upon attacking Seoul in September of 1950 the same tactics of general destruction were continued.

In September of 1950, the French journalist Charles Farvel visited the camp of death, located in the "valley of horror" in Southern Korea. More than 300,000 Koreans are doomed to death in that camp. At that time there were 10 such camps. The camps are surrounded by barbed wire, along which run high voltage electric currents. The people live on the ground, they have neither clothing nor shoes. They are not fed, they eat grass and the bark of trees and bushes. American scientists and doctors, under the guise of giving medical assistance, test the newest vaccines and chemical preparations on the prisoners. Every night there are executions in the ravines surrounding the camps. To

be destroyed in the first order are the intelligentsia of the Korean people: doctors, teachers, engineers, technicians, agriculturists.

"I accuse!"—declared the Korean artist [a woman] Zoe Sin Hee—"The blood of thousands of infants, destroyed by the Americans, the tens of thousands tortured in the camps of death, the hundreds of thousands killed at the front, call for justice. The American military criminals must be severely punished for their evil deeds. I accuse them. I believe that the hour of retribution will soon arrive".

In retreating in January of 1951, the occupation forcibly chased more than two million peaceful inhabitants to the south of Korea, who died in thousands on the road and the roadside ditches from hunger and cold, from the bullets of the aggressors.

Those of the peaceful population of Northern Korea who remained alive or were dispersed among the camps expected hunger and epidemics. Even the notorious "UN Commission on the Unification and Reestablishment of Korea" in its letter to the UN of February 1, 1951, notes that 3,628 Koreans have been left without a roof in penury.

The Korean children are everywhere subject to the fury of the occupation. Everywhere, where the foot of the intervenors has stepped—in the province of Southern Pennyan, Northern Kengke, Southern Kengke, Kanko, Chang-Bong—the American bandits have destroyed the children.

And again one cannot dismiss the thought that the ideologists guiding the dreadful events in Korea consider themselves to be Christians, and not only Christian, but even leaders of Christian organizations! They know the Bible and often state so in the hearing of all!

And reason refuses to give an explanation of this nightmare, and the heart does not cease to tremble from feelings of holy hatred toward the cannibals, and the conscience of all simple people cries out against the evil deeds of the American aggressor!

Waves of protest and indignation against the American aggression in Korea and the evil deeds of the occupation;

against the attempts to loosen a new world war by means of blocs, pacts, the remilitarization of Germany and Japan; against the exploitation of the UN by the United States of America as a weapon of aggression—roll over the entire world. This indignation against the rulers who have lost their reason and will, dragging people towards the precipice, can be heard in numberless petitions, sent to parliaments and ministries. It is heard in the appearances of women and young people, going on in all the countries of the world. Protest and indignation is expressed by the many-thousand-strong crowds gathering in the town squares of Europe and demanding that the oversea world bandits and world colonizers in dress-coats and generals' tunics return home.

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And our holy duty, dear friends, is to tighten our ranks in the fight for peace, for the cessation of the bloody aggression in Korea, in the fight against the remilitarization of Western Germany and Japan, as a step towards a new war, against weapons for the mass annihilation of people, for the progressive curtailing of armament.

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METROPOLITAN NICHOLAS.

No. 4, April, 1951.

For the Berlin Session of the World Council of Peace Address of the Patriarch of Moscow and All Russia Alexy (p. 5)

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The Russian Orthodox Church, in complete agreement with the opinion of the members of the II World Congress of the defenders of peace, considers absolutely essential the outlawing of all forms of weapons of mass murder, atomic and bacteriological armament, the declaration as a war criminal of any who first uses them, the limitation of

armament and international control over it and the cessation of the bloody American aggression in Korea.

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No. 5, May, 1951.

Well-earned Reward

[Article relates the awarding of the Stalin prize for 1950 to seven outstanding members of the "democratic forces of different countries", among them Arthur Moulton, "former protestant bishop of the State of Utah in America" and Hewlett Johnson.]

(p. 22)

In affirmation of this truth H. Johnson contrasted the colossal expenditures of the United States of America for armament with the peaceful undertakings of the Soviet Union, occupied with raising the standard of living of its people; contrasted also the possession by the U. S. A. of 500 air bases, located thousands of miles from American shores and surrounding the Soviet Union in a ring, with the absence of Russian troops beyond the boundaries of Russian territory, excluding Austria and Germany, where they are by right, stipulated by agreements.

Having, further, disclosed the Marshall plan as an attempt of the U. S. A. to establish its rule in Europe, Dr. Johnson indicated the true sources of the martial threat and called upon the Western peoples to throw off the dollar chains in its prevention. "Then—he said—we shall see a united Germany . . . a united Europe . . . a free Korea, a China surrounded with respect and a united world—Eastern and Western, then we shall see peace throughout the world and the foundation of a true brotherhood".

By his numerous appearances in defense of peace, in defense of the unity of interests of simple people of all nations, the pastor of Canterbury Cathedral Dr. Johnson has acquired great influence on the popular masses of

England and other countries of Western Europe and Ameriea. It is no wonder that their governments are always trying to limit his propaganda activities, revealing their aggressive intentions. Therefore that satisfaction with which progressive circles of all countries greeted the award to Dr. Johnson of the Stalin peace prize can be clearly understood.

A. VEDERNIKOV.

No. 5, May, 1951.

Reflections on Truth and Falsehood

(For the First Session of the World Council of Peace)

(pp. 8-11)

"Falsehood is the infamous dishonor of man"
St. John Zlatoust.

No one likes to have his evil deeds revealed; no one wants his falsehoods discovered. That is exactly why the first session of the World Council for Peace was forbidden in Geneva.

Recently I said that the kindlers of war were ready to break the legs of those heralding peace. At that time it was only a metaphor. But on March 12, in Essen (Western Germany) actuality surpassed it. A hundred cruel people—automats of the "mobile police" spilled the blood of young men and women who had met to protest against war, splitting their heads with rubber truncheons. The myrmidons of the U. S. A., the revengers of Adenauer, had already begun to fight.

Why does the dreadful plaint rise to God of the destroyed peaceful Korean nation, and the blood flow in rivers, not only in Korea, but in Greece, Malaya, Vietnam?

Because the new idolators bring sacrifices to their idol—the golden Moloch, hetacombs of human bodies. But—what is still more unbearable—they dare to say that they do this in the name of the preservation of Christian culture.

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Christan culture is preserved by those who prove their love for peace by their pure deeds, who suffer for the sake of truth, and not by those who light the flame of hatred and force others to suffer indescribably. The worshippers of the golden calf write openly in their newspapers:

"Recourse can always be had to armament, if private business activity declines."

"As a result of war it is easy to create an atmosphere of war hysteria and, almost certainly, it will lead to vast appropriations for armament."

"When the nazis speak of peace, an economic catastrophe rises before the U. S. A.".

"The Korean war means more profit for the U. S. A., more automobiles, houses and provisions."

This is not "Soviet propaganda", this is an excerpt from a speech of the pastor of Canterbury Cathedral, Dr. Hewlett Johnson, at the Berlin session of the World Council of Peace.

Let us ask the newly arisen defenders of Christian culture will they dare, after the martial exploits in Korea, to ever send their missionaries to preach the Gospel of love to the people of As[illegible]frica and Australia, who will never forget their exemplary lessons of hatred, cruelty and black injustice?

In the dreadful clouds of smoke of burning Korean cities and towns we see many thousands of cruel and bestial people, direct performers of atrocities that cry to Heaven, led by American generals. Dreadful are the coldly cruel faces of the aviators, dropping death-dealing bombs on peaceful cities and towns, using machine guns on the fleeing crowds of old men and women with little children.

Why are these people, previously occupied in their own land with peaceful work, so dreadful now? Because they

have been thrown into the flame of fire and into oceans of blood. Because in the fight not for life, but unto death, men become bestial. But these very same men, when they have calmed down and come to their senses in the barracks for prisoners of war, send angry protests to their governments against the injustice of the war, against the falsehoods that have enmeshed them.

Let us turn our eyes to Lake Success, in whose halls the General Assembly of the United Nations Organizations sat so recently, and where now its general secretary administers its will.

Oh, what joyous hopes, in our naiveté, we laid on this organization upon its creation!

How passionately we expected truth and peace of it!

But, during the course of five years, from day to day, our hopes crumbled, and a torturous sadness for truth took possession of our hearts.

We awaited truth . . . —"and here are wails".

Awaited peace—"and here is bloodshed".

Oh, how disastrous and unbearable is the falsehood, pouring in streams from the hall of Lake Success, diabolic untruth, which reached its apogee in the declaration of China as an aggressor!

But honest people, stubborn in their belief in truth and justice, do not cease to send hundreds of thousands of letters of protest to the secretary of the UN and to the Safety Council; organize a great march to Washington.

The lie, dictated in the UN by the kindlers of war, is thrust upon their people by ten European governments and twenty governments of Latin America. It is sown by an army of conscientious journalists, ready for anything. It is accepted by credulous people and those easily frightened, as from them is hidden anything that might disprove the lie. We hold them blameless and are sincerely sorry.

The entire sea of humanity, populating the earth, is violently agitated. There has never yet been such a storm in its entire history. Its waves wash over the most remote and quiet corners of the globe. The negroes of Africa, New Guinea and the Papuans are driven to slaughter in

Korea and Malaya, because they can be driven, regardless of their will, as cows are driven to the slaughter-house. They are driven because the cultured Australians refuse to fight.

Oh, the poor people of the "lower races", who bother no one, who have no conception of Korea and Malaya, whose peaceful inhabitants they are ordered to kill!

What a black falsehood, what coercion, what evil!

Is everyone disturbed by this falsehood, does everyone's heart burn with indignation and with protest?

To our sorrow, not everyone's. But to the honor of humanity, it is only the minority, and an insignificant one at that. While the majority are honest, simple people. They are those 500,000,000 who signed the Stockholm Proclamation, and the many millions who would also have signed it, if they had not been persecuted and hunted for so doing. They are not only the "simple people", such as the dock-workers of France, Belgium, England, who refuse to unload ships with American armaments; in the ranks of honest people there are numbers of the highly cultured, such as teachers in American universities who appealed to Truman with a collective protest against armament and the militarization of Western Europe.

They are also the World Council—a vast force, now opposing the kindlers of war.

And the other great force, as has already been acknowledged by the world, is the deeply honest policy which is being conducted in the United Nations Organization and the Security Council by representatives of the U. S. S. R.

The shameful infidelity to their word of the governments, who signed the Atlantic and the Potsdam agreements, is contrasted by the changeless, majestic honesty and eternal faithfulness of our Government.

There are already martyrs for the truth of the protest against the war in preparation, young men and women languishing in prison, whose skulls were crushed in Essen, who defended their younger comrades with their bodies. There are heroes, such as the young Frenchwoman Raymonde Dehn, who lay down on the tracks to stop a train

with American armaments for Western Germany. Their names will not be forgotten.

All this is the unconquerable strength of truth, which is immeasurably greater than even the dreadful force of atomic bombs. By falsehood, that dire dishonor of humanity, and by atomic bombs, it perhaps is possible to drown truth in blood, for a while, but it is impossible to destroy it, for truth—is from God and therefore eternal.

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ARCHBISHOP LUKA.

No. 6, June, 1951.

On the Tenth Anniversary of the beginning of the Great Fatherland War

(pp. 11-13)

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The collection of contributions among the faithful—money, jewelry, warm clothing and underclothing—was a daily occurrence in the days of the war. Many clergy personally contributed money. And among the numerous telegrams of J. V. Stalin with greetings and thanks to groups of the faithful, their archpastors and pastors, there can be found many addressed by the head of the government to individual representatives of the Orthodox clergy.

Sometimes contributions were made for specific purposes—for tanks, aeroplanes. Upon a special appeal of Patriarch Sergius, money was collected for a tank column of the name of Dimitry Donskoy.

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Alas! Unfortunately the "conqueror-nations" proved unable to devote themselves to a longed-for peace and to completely transfer their energy to constructive toil. Bourgeois governments cherished other plans. A few years went by, and fascism, having woven its nest in another place, on another continent, beyond the ocean,

began again to openly show its monstrous claws. The conflagration of war, provoked by the imperialists, flared up in another part of the terrestrial globe—in Korea. And again the atrocities of licentious human-hatred shake the hearts of the people of all countries, who want to live not so as to profit, but so as to breathe freely and quietly, so as to build and create, to love, bring up their children, exhibit their capabilities and talents.

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* * * More than that, during these years there has not been a single declaration of J. V. Stalin in which he has not stressed the desire of the Soviet Union for peace, or has not indicated that now all the efforts of all nations must be directed into the struggle with the kindlers of war.

* * * In the central Soviet press, and on the pages of the church press, declarations and appeals appeared constantly from the Head of the Russian Orthodox Church, the Patriarch of Moscow and All Russia, to the entire Christian world and brotherly autocephalous Orthodox Churches, to raise their voices against all attempts and actions, directed toward the breaking of the peace, against the oncoming new manifestations of human hatred.

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The first call to peace was sounded in the days of the jubilee celebrations for the 500 years of the autocephaly of the Russian Orthodox Church. The appeal to the Christians of the entire world was unanimously adopted on July 17, 1948, by the Heads and Representatives of the Orthodox autocephalous Churches of: Russia, Antioch, Alexandria, Georgia, Serbia, Bulgaria, Roumania, Albania, Poland.

In this appeal the existing situation was clearly defined: "Let us not close our eyes, like the ostrich, in the face of the imminent manifestations of new human hatred, let us not stuff our ears to the mad roar of a new war. No one will dispute that the imperialists, great and small, the terrorists, the dictators and the haters of humanity of all kinds have

taken upon themselves the satanic roles of instigators and preparers of a new insane self-destruction, the finale of which will be the end of culture and the meaning of life".*

A. SHAPOVALOVA.

No. 7, July, 1951.

The Presentation of the International Stalin Prize to the English Social Worker, Prior of Canterbury Cathedral, Hewlett Johnson

(pp. 11-13)

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Speeches of welcome were made by the chairman of the Soviet Committee for the defense of peace N. S. Tikhonov, Professor I. E. Gloushenko and, in the name of the Russian Orthodox Church, Metropolitan Nicholas of Krutitsk and Kolomen.

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Speech of Hewlett Johnson

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In the USA peace is a forbidden word. Over there people are put in prison for organizing meetings of the partisans of peace. Magazines and radio in America speak of war, of the necessity of war. The entire economy of the USA depends on war or the preparation for war. Peace is an honorable word in the Soviet Union, peace is a forbidden word in the USA.

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* * * That word peace, which we preach, lives in the hearts of people fighting for peace. My people have taken that appeal close to their hearts. $150,000,000 which the USA has designated for its propaganda cannot hide the truth from my people. * * *

(TASS.)

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* "The Russian Orthodox Church in the Fight for Peace", Moscow 1950, p. 11.

No. 8, August, 1951.

Appeal to the Christians of the whole World.

(p. 3)

. . . . . .

Everyone knows how seriously strained the international situation has become, threatening the world with calamitous results. The dreadful conflagration of violent warfare in Korea has destroyed more than a million human lives and has completely ruined the welfare of the peaceful Korean people. A similar murderous storm is also gathering over other countries. It grows heavier by measure of how the aggressive governments—headed by the USA—arm themselves, dooming people to the woes of penury in the present and to destruction to a man in the future. The unheard-of weight of sorrows is already ready to crash down upon humanity.

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[Note: The above was signed at Moscow, on July 23, 1951, by the Patriarchs of Antioch, the Russian, Georgian, Roumanian and Bulgarian Orthodox Churches. Photostatic reproduction of signatures appears at end of appeal, which apparently was typewritten.]

No. 9, September, 1951.

Speech at the Meeting of the Soviet Committee for the Defense of Peace August 24, 1951.

(pp. 26-28).

. . . . . .

This new demand for peace calls forth hatred in the kindlers of a new war, the American imperialists, newly-risen pretenders to world domination. They dream of realizing that over which Hitler broke his neck: to turn the entire world into their colony, and all humanity into slaves of American millionaires and billionaires. They intend not only to liquidate the fruits of victory over fascism, but to plant the most somber reaction throughout the entire ter-

restrial globe. The entire policy of the Anglo-American aggressive bloc is directed towards this criminal purpose: and the bloody adventure in Korea, and the aggression against China, and the factual occupation by American troops of a series of European countries, and the turning fascist of the internal life of the USA and of other capitalistic governments.

The kindlers of war do not calm down, continuing the feverish race for rearmaments. The merchants of death squeeze the last drops from countries in their power, doom peoples to destruction and famine.

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METROPOLITAN NICHOLAS.

No. 9, September, 1951.

Announcement of the Patriarch of Antioch and the entire East

(pp. 4-6)

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Patriarch Alexander III made the following statement to the press:

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"I am sincerely glad that the Antioch Orthodox Church is also taking an active part in this great and holy cause, as war is the infringement of the fundamentals of Christian morality, calamity and a burden for simple people in the name of the enrichment of those few who own factories for the manufacture of the weapons of war, in the name of the attempt of the USA to achieve world domination.

During my recent trip to Greece I became convinced that the Orthodox Church in that country, which yearly receives alms from Americans, will not come forward in the cause of peace.

I am convinced that personally the Ecumenical Patriarch Athenagoras desires peace but he will never say so,

for he received the patriarchal throne with the aid of American governing circles.

Nor will he come forward against the Vatican—one of the initiators of the new war, as his "friend" Truman is a friend of Pope Pius XII.

There are also attempts on the part of representatives of England and the USA in Syria and the Levant to tear apart the ancient love between the churches of Antioch and Moscow in the name of their aims, inimical to the Soviet Union."

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(Tass).

"Izvestia", August 25, 1951, No. 199

No. 11, November, 1951.

Speech at the Georgian Republican Conference of the Partisans of Peace in Tbiliss—September 19, 1951. (pp. 26-27)

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Everyone knows that the Anglo-American imperialists are feverishly preparing a new world war, but there is no doubt that the people of good will of the entire world will destroy the attempts of the kindlers of war. • • •

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• • • Is it possible to call Christians those western neighbors, who, considering themselves to be the guides of the blind, light for those in darkness, preceptors of the ignorant and teachers of infants, at the same time sell poisoned products, prepare for an atomic bombardment of the world, in Korea kill infants, women and the aged, destroy all life (even plant life).

Can the Georgian Church, even for a minute, be reconciled with that barbarous event which took place recently in Korea: flood victims sought refuge on the roofs of houses and in the branches of trees, and these unfortunates had

bombs dropped on them from above. [Let us keep] far away, far away from such Christians. They are wolves in sheep's clothing, while our socialistic country always was and is a country that defends the oppressed, a country of fighters for peace, a defender-country of the interests of the toilers of the entire world.

Therefore the Georgian Orthodox Church, with all the people of good will and with all the peoples of the Soviet Union, demands the conclusion of a Peace Pact between the five great powers—the Soviet Union, the United States of America, the Chinese Peoples Republic, Great Britain and the French Republic.

Despite the fact that the kindlers of war desire to draw the peoples of the world into the horrors of war—the forces of the partisans of peace daily grow stronger and increase in number.

Peace will conquer war, for the cause of peace is guided by the wise Leader of the people, the great standard-bearer of peace Joseph Vissarionovich *Stalin!*

KALLISTRAT, CATHOLICOS-PATRIARCH
OF ALL GEORGIA.

No. 11, November, 1951.

Let us Intensify the Struggle!

Speech at the Second Session of the World Council of Peace
(Vienna, November 5, 1951)

(pp. 30-31)

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The resolution, known to us all, of the Bureau of the World Council of Peace, taken at the last meeting of the Bureau in Helsinki, speaks with convincing clarity of the danger, hanging over the world, and of the necessity of intensifying the struggle against the instigators of a new war.

The resolution indicates that the ceaseless and bloody war, lasting for a whole year, in Korea, which has destroyed

the country to its foundations and destroyed more than a million human lives, brought no positive results for the intervenors. The resolution contrasts this fact with that tremendous response throughout the world which was called forth by the first news of the initiation of the cessation of military activity in Korea.

Actually, is it not clear that if a mighty power, which has thrown into the "operation" vast material and human reserves, could not conquer a small country in the course of so long a time; if the people of that country not only survived the most grievous, dreadful torments, but, supported by the sympathy of all honest humanity in this struggle for what is right for it, draw new strength for opposition to the foreign-invaders—is it not clear that the continuation of this criminal adventure will call forth only new hatred and cruelty; that new torrents of flame and iron will be poured into the bottomless pit, new tens and hundreds of thousands of human lives, to human sorrow and the joy of only an insignificant bunch of the manufacturers of death? And is it not apparent that the most natural way out of this destructive situation—is to stop the war, take all the foreign armies out of the long-suffering country and let the home-owners settle their own quarrels? The slogan of all freedom-loving humanity has not lost its force: hands off Korea!

And where does this insane contest to turn as much government money, and as quickly as possible, into weapons of destruction come from? This race, as its initiators affirm, bears a "peaceful", defensive character and is directed against the danger, which it would seem threatens "Christian civilization" on the part of the Soviet Union and the countries of the peoples democracy. . . .

The resolution reveals the hearth of a new war danger, growing in the remilitarization of Japan and Western Germany. . . .

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. . . The masses of the people throughout the world full of stern resolution, speak in the words of the great

singer Paul Robeson, to put the shirts of peace on the generals and diplomats, inflaming the danger of war.

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Having lost their right minds and free of conscience, the torch-bearers of a new war say that, to quote, there is no need of a Peace Pact because the UN is fully competent to settle all acute and controversial international problems. What pitiable prattle! Has the UN in the very least justified the hopes laid down on it by all humanity, as being an organization for the peace and safety of peoples? And can a country of 475,000,000 population, which has realized ancient national hopes, has found the solid forms of new social relations and is already long occupied with constructive fruitful labor, be deprived of participation in international life?

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METROPOLITAN NICHOLAS.

No. 12, December, 1951.

Let us Defend the Cause of Peace

An address of the third All-Union Conference of the Partisans of Peace to all the Participants of the Movement in the Defense of Peace in all Countries

(pp. 15-16)

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The Soviet people insistently fight for peace because they consider an aggressive war to be a most grievous crime before humanity, the greatest misfortune for the simple people of the world. More than 117,000,000 Soviet citizens, who signed the Address of the World Council of Peace for the Conclusion of a Peace Pact, have announced that they wish to live in peace and friendship with the people of the USA, England, France and all the other countries of the world.

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The Soviet people warmly approve and unanimously support the peace-loving external policy of the Soviet government, which has repeatedly stated that it considers possible the peaceful existence of governments with different economic systems and idealogies.

We are not afraid of peaceful competition with capitalism, but neither are we afraid of the intrigues of imperialistic aggressors. There is no such force in the world as could force our people to swerve from the way of a constructive communistic society.

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Millions of Soviet people share the worry of simple people in all countries in connection with the threat of a new world war, for which thirst the frantic reactionaries and financial magnates, in the first place the American and English. In war they see the main source of enrichment, of the receipt of colossal super-profits. For almost a year and a half now the ruling circles of the USA lead a grasping, devasting war against the freedom-loving Korean people. Having boldly trampled on all previously concluded international agreements, the American reactionaries enlarge the aggressive Atlantic bloc, create new military bases in all parts of the world and feverishly intensify the race for armament and preparation for war with the application of atomic weapons. For these purposes they turn the United Nations organization into an instrument of war, revive Japanese and German militarism. The American reactionary press and radio from day to day conduct a licentious, lying anti-Soviet propaganda, trying to kindle enmity toward the Soviet Union, the Chinese National Republic and the countries of the people's democracy. The people of the countries in the Atlantic bloc are suffocating under the load of military budgets, taxes and expensiveness.

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No. 12, December, 1951.

Speech at the Third World Conference of the Partisans of Peace

(pp. 18-19)

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Everyone knows that at the time that American millionaires and billionaires intensely prepare a new war—the Soviet Union carries on the construction of gigantic hydro-electric stations, dries out swamps, irrigates deserts and makes fertile every bit of land by its kindly and free toil.

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Contempt and holy hatred are evoked in our days by the fascistic dispositions of American imperialists and their dreadful moral appearance.

In their desire for world dominance the American aggressors carry on a war against the people of the East. The earth of freedom-loving Korea is flooded with blood, thousands of sons and daughters of the heroic Korean people are tortured to death. The will and freedom of the people of Vietnam and Malaya are being cruelly suppressed. The so-called "Atlantic bloc" is being built, directed against the peace-loving Soviet Union and the countries of the national democracy. Piracy, robbery, provocation, the oppression of small peoples, ridicule of humanity and democracy—are the "symbols of faith" of Anglo-American imperialism.

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But if anyone should take it into one's head to force a many-millioned and many-nationed population, welded into a monolith, to take up arms, then let him know that we know not only how to fight, but also how to conquer. The history of the last decades serves as an indication. It cannot be otherwise.

The cause of peace will triumph, for the movement for peace is guided by the great champion and standard-bearer of peace—Joseph Vassarionovich Stalin.

KALLISTRAT, CATHOLICOS—PATRIARCH OF ALL GEORGIA.

No. 12, December, 1951.

Second Session of the World Council of Peace

(pp. 20-21)

Everyone knows that the kindlers of war in Washington and London and their satellites do not cease the insane preparations for a new world war for a day. Almost every week the American Senate designates supplemental funds for armament, for the putting together of an aggressive army. American generals ceaselessly run about the world. American aggressors continue to wage a war of extermination in Korea. They build military bases around the Soviet Union and the countries of the peoples democracy.

Not for one day, in the countries of capital, does war propaganda stop. War hysteria in the USA has reached its apogee, there everything is directed to the service of war.

The ideas of hatred of humanity are innoculated in children and young people on a broad scale in the USA. And here is what such an education by cannibals leads to: "At one of my lessons on social science—tells one of the progressively inclined teachers of the USA—a pupil asked: 'Why did we not drop an atomic bomb immediately on the Soviet Union?' Before I had time to answer anything, another student added: 'But the Russians—they are not people'".

It is thus that the American kindlers of war try to raise murderers from their tender years. Thus the enemies of peace desire to corrupt the minds of people and force them to be submissive participants in unheard-of evil deeds against humanity.

METROPOLITAN NICHOLAS.

APPENDIX C.

SELECTED CASES ON CHURCH PROPERTY

Malone v. *Lacroix*, 1904, 143 Ala. 657; *Gewin* v. *Mt. Pilgrim Baptist Church*, 1909, 166 Ala. 345; *Dismukes* v. *S. ex rel. Hill*, 1912, 176 Ala. 616; *Mitchell* v. *Church of Christ at Mt. Olive*, 1930, 221 Ala. 315; *Guin* v. *Johnson*, 1935, 230 Ala. 427.

Britton v. *Jackson*, 1926, 31 Ariz. 97.

Sanders v. *Baggerly*, 1910, 96 Ark. 117; *Jamison* v. *Henderson*, 1934, 189 Ark. 204.

Dyer v. *Superior Court*, 1928, 94 Cal. App. 260; *Wheelock* v. *First Presb. Church*, 1897, 119 Cal. 477; *First English Evang. Luth. Church* v. *Dysinger*, 1932, 120 Cal. App. 139; *Horsman* v. *Allen*, 1900, 129 Cal. 131; *Committee of Missions* v. *Pac. Synod*, 1909, 157 Cal. 105.

McAuliffe v. *Russian Greek Catholic Church*, 1941, Super. Ct. Fairfield Co., 12 Conn. Supp. 343, aff'd, 1944, 130 Conn. 521, cert. den. 323 U. S. 726; *Chornock* v. *Popp*, 1947, C. P. Fairfield Co., 15 Conn. Supp. 153; *Trustees of Trinity M. E. Church* v. *Harris*, 1900, 73 Conn. 216; *Russian Orthodox Greek Cath. All Saints* v. *Kiedrovsky*, 1931, 113 Conn. 696; *Independent M. E. Church* v. *Davis*, 1950, 137 Conn. 1.

St. Nicholas Ruthenian Greek Catholic Church v. *Bilanski*, 1932, 19 Del. Ch. 49; *Bouchelle* v. *Trustees of Presbyterian Cong.*, 1937, 22 Del. Ch. 58; *Gibson* v. *Pencader Presbyterian Church*, 1939, 24 Del. Ch. 270; *Trustees of Del. Annual Conf.* v. *Ennis*, 1942, 29 Atl. 2d 374.

Ebbinghans v. *Killian*, 1881, Sup. Ct. D. C. Gen. T., 1 Mackey 247, rev'd *sub nom Killan* v. *Ebbinghans*, 1884, 110 U. S. 508.

Partin v. *Tucker*, 1937, 126 Fla. 817.

Godfrey v. *Walker*, 1871, 42 Ga. 562; *Mack* v. *Kime*, 1907, 129 Ga. 1; *Carlson* v. *Fox*, 1944, 198 Ga. 400.

Apostolic Holiness Union v. *Knudsen*, 1912, 21 Idaho 589.

Farraria v. *Vasconcellos*, 1863, 31 Ill. 25; *Chase* v. *Cheney*, 1871, 58 Ill. 509; *Lawson* v. *Kolbensa*, 1871, 61 Ill. 405; *Schweiker* v. *Husser*, 1893, 146 Ill. 399; *Kuns* v. *Robertson*, 1895, 154 Ill. 394; *Christian Church of Sand Creek* v. *Church of Christ*, 1906, 219 Ill. 503; *First Presb. Church* v. *First Cumberland Presb. Church*, 1910, 245 Ill. 74; *German Evang. Luth. Trinity Congregation* v. *Deutsche Gemeinde*, 1910, 246 Ill. 328; *Pleasant Grove Congregation* v. *Riley*, 1911, 248 Ill. 604; *People ex rel. Michajlowski* v. *Tanaschuk*, 1942, 3d div., 1st dist., 317 Ill. App. 130; *Church of God, Decatur, Ill.* v. *Finney*, 1951, 3d dist., 344 Ill. App. 598.

Ramsay v. *Hicks*, 1909, 44 Ind. App. 490, rev'd, 1910, 174 Ind. 428; *Gaff* v. *Green*, 1882, 88 Ind. 122; *White Lick Quarterly Meeting* v. *White Lick Quarterly Meeting*, 1883, 89 Ind. 136; *Ashland* v. *Studebaker*, 1944, 115 Ind. App. 73; *Lamb* v. *Cain*, 1891, 129 Ind. 486; *Smith* v. *Pedigo*, 1893, 145 Ind. 361; *Barth* v. *Ulay*, 1911, 175 Ind. 494.

Mt. Zion Church v. *Whitmore*, 1891, 83 Iowa 138.

Church of God v. *Kimbrough*, 1926, 120 Kan. 581; *Jackson* v. *Jones*, 1930, 130 Kan. 488; *United Brethren etc.* v. *Mt. Carmel Community Cemetery Ass'n.*, 1940, 152 Kan. 243; *Hughes* v. *Grossman*, 1949, 166 Kan. 325.

Watson v. *Avery*, 1867, 2 Bush 332; *McKinney* v. *Griggs*, 1869, 5 Bush 401; *Gibson* v. *Armstrong*, 1847, 7 B. Mon. 481; *First Presb. Church of Louisville* v. *Wilson*, 1878, 14 Bush 252; *Wallace* v. *Hughes*, 1909, 131 Ky. 445; *Trustees of Oak Grove Missionary Baptist Church* v. *Ward*, 1935, 261 Ky. 42; *Parker* v. *Harper*, 1943, 295 Ky. 686; *Pelley* v. *Hill*, 1944, 299 Ky. 184.

Baker v. *Fales*, 1820, 16 Mass. 488; *Canadian Religious Ass'n* v. *Parmenter*, 1902, 180 Mass. 415; *Syrian Archdiocese St. George Orthodox Church* v. *Ghize*, 1927, 258 Mass. 74; *Greek Orthodox Community* v. *Malicourtis*, 1929, 267 Mass. 472; *St. Michael's Ukrainian Greek Catholic Church* v. *St. Michael's Ukrainian Orthodox Church*, 1934, 288 Mass. 258.

Bear v. *Hensley*, 1893, 98 Mich. 279; *Wilson* v. *Livingstone*, 1894, 99 Mich. 594; *Fuchs* v. *Meisel*, 1894, 102 Mich. 357; *Borgman* v. *Bultema*, 1921, 213 Mich. 684; *Russian*

Orthodox All Saints Church v. *Darin*, 1923, 222 Mich. 35; *Hanna* v. *Malick*, 1923, 223 Mich. 100; *Komerynski* v. *Popovich*, 1925, 232 Mich. 88; *United Armenian Brethren Evangelical Church* v. *Kazanjian*, 1948, 322 Mich. 651; *Michigan Cong'l Conference* v. *United Church*, 1951, 330 Mich. 561.

East Norway Lake Church v. *Halvorson*, 1890, 42 Minn. 503; *Trustees of German Evangelical Society* v. *Henschell*, 1892, 48 Minn. 494; *Schradi* v. *Dornfeld*, 1892, 52 Minn. 465; *Lindstrom* v. *Tell*, 1915, 131 Minn. 203; *Mattson* v. *Saastamoinen*, 1926, 168 Minn. 178; *Rock Dell Norwegian Evang. Luth. Congregation* v. *Mommsen*, 1928, 174 Minn. 207; *Russian-Serbian Holy Trinity Church* v. *Kulici*, 1938, 202 Minn. 560.

Mt. Helen Baptist Church v. *Jones*, 1901, 79 Miss. 488; *Carothers* v. *Moseley*, 1911, 99 Miss. 671.

Russie v. *Brazeal*, 1895, 128 Mo. 93; *Boyles* v. *Roberts*, 1909, 222 Mo. 613; *Hayes* v. *Manning*, 1914, 263 Mo. 1.

Rottman v. *Bartling*, 1887, 22 Neb. 375; *Wehmer* v. *Fokenga*, 1899, 57 Neb. 510; *Bonacum* v. *Murphy*, 1904, 71 Neb. 463; *Kansan Free Baptist Church* v. *Lattimore*, 1914, 103 Neb. 755; *Geiss* v. *Trinity Lutheran Church Congregation*, 1930, 119 Neb. 745.

Hale v. *Everett*, 1868, 53 N. H. 9.

Associate Reformed Church v. *Trustees*, 1837, 4 N. J. Eq. 77; *Everett* v. *First Presbyterian Church*, 1895, 53 N. J. Eq. 500; *Schilstra* v. *Van Den Heniel*, 1913, 82 N. J. Eq. 155; *Ryszkov* v. *Kaimakan*, 1931, 108 N. J. Eq. 34; *Mathis* v. *Holmes*, 1943, 134 N. J. Eq. 186.

Isham v. *Trustees of First Presbyterian Church*, 1882, 63 How. Pr. 465; *Kniskern* v. *Lutheran Churches of St. John's and St. Peter's*, 1844, Circ. Ct., 1 Sandf. Ch. 439; *Rector etc. Christ's Church* v. *Collett*, 1924, 2d Dept., 208 App. Div. 695; *Cadman Memorial Congregational Society of Brooklyn* v. *Kenyon*, 1950, Spec. T., Kings Co., 197 N. Y. Misc. 124, rev'd 1952, 279 App. Div. 1074.

Conference v. *Allen*, 1911, 156 N. C. 423; *Dix* v. *Pruitt*, 1927, 194 N. C. 64.

Gudmundson v. *Thingvalla Lutheran Church*, 1914, 29 N. D. 291; *Presbytery of Bismarck* v. *Allen*, 1946, 74 N. D. 400.

Rike v. *Floyd*, 1891, Montgomery Co. Circ. Ct., 6 Ohio C. C. 80; *Griggs* v. *Middaugh*, 1889, Perry C. Pl., 10 Ohio Dec. 643; *First Presbyterian Society* v. *Markley*, 1910, Super. Ct. Cincinnati, 10 Ohio N. P. (N. S.) 529; *First United Presbyterian Church* v. *Young*, 1919, C. P. Muskingum, 21 Ohio N. P. (N. S.) 569; *Burkett* v. *Stake*, 1924, Ct. Ap. Summit Co., 24 Ohio L. R. 235; *Honey Creek Regular Baptist Church* v. *Wilson*, 1950, 92 N. E. 2d 419.

First Presbyterian Church v. *Cumberland Presbyterian Church*, 1912, 34 Okla. 503; *First Evang. Lutheran Church* v. *Block*, 1945, 195 Okla. 579.

Philomath College v. *Wyatt*, 1893, 27 Oreg. 390.

McGinnis v. *Watson*, 1861, 41 Pa. 9; *Roshi's Appeal*, 1871, 69 Pa. 762; *McAuley's Appeal*, 1875, 77 Pa. 397; *Kerr's Appeal*, 1879, 89 Pa. 97; *Schlichter* v. *Keiter*, 1893, 156 Pa. 119; *Krecker* v. *Shirey*, 1894, 163 Pa. 534; *Greek Catholic Church* v. *Orthodox Greek Church*, 1900, 195 Pa. 425; *Nagle* v. *Miller*, 1922, 275 Pa. 157; *St. Mary's Immaculate Conception Greek Catholic Church's Petition*, 1929, 296 Pa. 307; *Maceirinas* v. *Chesna*, 1930, 299 Pa. 70; *St. John the Baptist R. O. G. C. Church* v. *Fenno*, 1933, 312 Pa. 46; *Canovaro* v. *Brothers of Hermits of St. Augustine*, 1937, 326 Pa. 76; *Malanchuk* v. *St. Mary's Greek Catholic Church*, 1939, 330 Pa. 385; *St. George's Syrian Greek Orthodox Church* v. *Saba*, 1926, C. Pl., Lehigh Co., 12 Lehigh Co. L. J. 93; *George* v. *Khouri*, 1920, C. Pl., Luzerne Co., 23 Luz. Leg. Reg. Rep. 339.

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v. *Burnett*, 1901, 108 Tenn. 173; *Landrith* v. *Hodgins*, 1907, 121 Tenn. 556.

Brown v. *Clark*, 1909, 102 Tex. 323.

Smith v. *Nelson*, 1846, 18 Vt. 511.

Hendryx v. *People's United Church*, 1906, 42 Wash. 330; *Hoffman* v. *Tieton View Community M. E. Church*, 1949, 33 Wash. 2d 716.

Venable v. *Coffman*, 1867, 2 W. Va. 310; *Woodrum* v. *Burton*, 1921, 88 W. Va. 322.

West Koshkonong Congregation v. *Ottesen*, 1891, 80 Wis. 62.

Terrett v. *Taylor*, 1815, 9 Cranch 43; *Mason* v. *Muncaster*, 1824, 9 Wheat. 445; *Smith* v. *Swormstedt*, 1853, 16 How. 288; *Bouldin* v. *Alexander*, 1872, 15 Wall. 131.

Brundage v. *Deardorf*, 1893, C. C. N. D. Oh. W. D., 55 Fed. 839, aff'd, 1899, 92 Fed. 214; *Reorganized Church of Jesus Christ of Later Day Saints* v. *Church of Christ*, 1894, W. D. Mo. W. D., 60 F. 937, rev'd *Church of Christ* v. *Reorganized etc.*, 70 F. 179, cert. den., 1895, 163 U. S. 681; *Barkley* v. *Hayes*, 1913, D. C. W. D. Mo. W. D., 208 F. 319, aff'd, 1915, *sub nom Duvall* v. *Synod of Kansas*, 222 F. 669, aff'd *sub nom Shepard* v. *Barkley*, 1918, 247 U. S. 1; *Sims* v. *Greene*, 1947, 3 circ., 160 F. 2d 512; *Evangelical Lutheran Synod* v. *First English Luth. Church*, 1942, D. C. W. D. Okla., 47 F. Supp. 954, rev'd, 1943, 135 F. 701, cert. den., 1943, 320 U. S. 757; *Smith* v. *Board of Pensions*, 1944, D. C. E. D. Mo. E. D., 54 F. Supp. 224.